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**Legislative Assembly
of Ontario**

Second Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 38^e législature

**Official Report
of Debates
(Hansard)**

Monday 11 September 2006

**Journal
des débats
(Hansard)**

Lundi 11 septembre 2006

**Standing committee on
social policy**

Clean Water Act, 2006

**Comité permanent de
la politique sociale**

Loi de 2006 sur l'eau saine

Chair: Shafiq Qaadri
Clerk: Trevor Day

Président : Shafiq Qaadri
Greffier : Trevor Day



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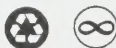
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 11 September 2006

Lundi 11 septembre 2006

The committee met at 1002 in committee room 1.

CLEAN WATER ACT, 2006

LOI DE 2006 SUR L'EAU SAINE

Consideration of Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts / Projet de loi 43, Loi visant à protéger les sources existantes et futures d'eau potable et à apporter des modifications complémentaires et autres à d'autres lois.

The Chair (Mr. Shafiq Qaadri): Good morning, everyone. As you know, the standing committee on social policy is here for consideration of Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts. The committee welcomes all members. I'd like as well, on our collective behalf, to welcome our legislative counsel, Mr. Doug Beecroft, who will be on hand to answer any legal questions. As well, according to standard protocol, as you know, all members of the committee have received amendments, and those have been distributed by the clerk. I will now open the floor. Mr. Wilkinson.

Mr. John Wilkinson (Perth–Middlesex): Mr. Chair, I believe we have unanimous agreement, given the fact that the minister is here, to move to section 87 for an amendment that would be moved by the government.

The Chair: Do I read that as the committee's will regarding unanimous consent? I do. Madam Minister.

Hon. Laurel C. Broten (Minister of the Environment): Good morning, everyone. I'm pleased to join you this morning and move an amendment with respect to section 87.1.

I move that part V of the bill be amended by adding the following section:

"Ontario drinking water stewardship program

"87.1(1) A program to be known in English as the Ontario drinking water stewardship program and in French as Programme ontarien d'intendance de l'eau potable is hereby established.

"Purpose

"(2) The purpose of the program is to provide financial assistance in accordance with the regulations to,

"(a) persons whose activities or properties are affected by this act;

"(b) persons and bodies who administer incentive programs and education and outreach programs that are related to source protection plans; and

"(c) other persons and bodies, in circumstances specified in the regulations that are related to the protection of existing or future sources of drinking water."

The Chair: Thank you, Madam Minister. The floor is now open for any questions, comments or debate. Mr. Tabuns.

Mr. Peter Tabuns (Toronto–Danforth): Minister, where will these funds come from? Will they come out of the Ministry of the Environment budget or out of general revenue?

The Chair: The parliamentary assistant will address the question.

Mr. Wilkinson: It is a commitment of the government that this will be a fund to be administered by the Ministry of the Environment.

Mr. Tabuns: So it will come out of the Ministry of the Environment budget?

Mr. Wilkinson: Yes.

Mr. Tabuns: Okay. Just to get clarity on (c), is this meant to provide ongoing operating funds for municipalities or other bodies in terms of monitoring, enforcement etc.?

Mr. Wilkinson: No.

Mr. Tabuns: Can you explain, then, what these funds are intended to do? I mean, (a) and (b) seem straightforward. What is (c) meant to do?

Mr. Wilkinson: Under this bill, as all members will remember, we had substantial deputations from so many groups—I would think almost all of the groups—and the thing that everybody agreed to was (1) that we needed the Clean Water Act, and (2) I think we had almost unanimous consent of all presenters that there needed to be a mechanism enshrined by legislation that would allow the province to play its appropriate role in assisting affected landowners, particularly farmers, so that when risk management officials—which we'll be referring and making amendments to—go to a property owner, they have what was commonly referred to as the carrot. To make that happen, we need to make sure that the government has a commitment to provide money. What this bill does, from a framework point of view, is create this stewardship fund, and the intention of the fund is to address the concerns of landowners.

What the regulations will do is, what is the best way to get that money into the hands of those people who have been affected? When we look at the CURB program—Clean Up Rural Beaches—the healthy futures program, the environmental farm plan, it isn't necessarily that we have landed on what are the best groups to get that money to people. We've left it open so that we are not constrained just through our source planning committees or just through conservation authorities. For example, not everyone is covered by a conservation authority. So there's enough leeway there that we can come up with the best program possible after we determine the problem, which is still a work in progress as we do our science.

Mr. Tabuns: So I understand correctly that this will not provide support for operations of municipalities or other bodies to actually monitor and enforce. I'm clear on that?

Mr. Wilkinson: Yes.

Mr. Tabuns: Okay. What sort of scope of funds are we talking about? How much money?

Mr. Wilkinson: As we have always said, there is no way of determining what is going to be the cost. For example, we had a great deal of testimony that said that if we went with the carrot approach, if we had a stewardship fund, if we had money on the table to encourage landowners to do the right thing, which they consistently told us they wanted to do, and looking at examples such as the CURB program and environmental farm plans, this was the most effective and most cost-effective way of getting the action that we need, which is ensuring that our common sources of drinking water are protected from significant threats.

I can tell you that we have made a commitment to make a down payment into this fund, but of course it presumes the fact that we pass this bill. This bill has to get through clause-by-clause, it has to be agreed to by the House. If Bill 43 does pass, with this amendment, the government has made a commitment to make an initial down payment of some \$7 million, earmarked initially for two items, but not the only two things that this fund would ever deal with: Initially, some \$5 million to assist municipalities to acquire wellhead and water intake protection zones and, as well, it's my understanding, about \$2 million for education. We were told consistently that we needed to implement this plan by providing more and more education funding upfront so that the people affected by this bill would participate in the terms of reference, the assessment report and the source planning committee process. So those are two initial priorities that this fund will have.

I would say to my friend that I would anticipate that about three years from now, when the science is done, that is when all of us will have an idea of the cost of implementing clean water.

I'm particularly proud that the minister came here today to ensure that enshrined in law, as requested by so many groups, there will be the drinking water stewardship fund to provide the province a way of making a meaningful contribution to implement the bill.

Mr. Tabuns: Last question: In the last election your leader promised to implement water-taking fees. You have an opportunity here to implement water-taking fees so as to fund this sort of activity. Why has your party decided not to carry through on that promise?

1010

Mr. Wilkinson: First of all, how the money flows to this fund from the government is still up in the air. I'm heartened to know that water-taking fees, that money, could be flowed by the Minister of Finance through to this fund.

Mr. Tabuns: No further questions.

The Chair: Thank you, Mr. Tabuns. We'll move to Mr. O'Toole.

Mr. John O'Toole (Durham): Thank you very much—just an opportunity. I'm sure Ms. Scott will have a chance to bring a few questions.

The Chair: Absolutely.

Mr. O'Toole: I think it's important to first recognize this is highly unusual that the minister would have to appear before this committee to redress the ill-conceived implementation plan for this particular legislation. The amendment is too little, too late.

Interjections.

Mr. O'Toole: Chair, if you could deal with the unruliness on the other side.

The Chair: The Chair respectfully requests the unruliness to desist.

Mr. O'Toole: It's just amazing that they have such little respect for process here. That's really what I've heard all through these hearings, basically that it isn't the importance of the goal, to achieve that goal; it's the process itself. And here we are, very late in the day, trying to ram this bill through without very much consultation, or at least some limited consultations forced by the John Tory opposition party and Ms. Scott.

The question has been asked by the NDP and I'm going to leave that line of questioning to Ms. Scott. But I just wanted to be on the record. We support the intent of the bill. The process has been flawed and here today another exception is being made, with the minister having to come back from the cottage and move this amendment. Now we're going to ask—we're really not sure where the money is coming from. Is it new money?

If you want to really get back to the process and how poorly administered this has been, probably under the previous minister more so than Ms. Broten, the conservation authorities were already working on this without any legislative mandate. They were already out there doing all this getting-ready stuff, and it's the smugness, that you're actually going to go ahead—and this is going to pass. This is going to be forced on the people of Ontario in a haphazard manner. We've admitted here this morning we'll endorse this amendment.

Even the parliamentary assistant, with all his good oratory skills, isn't able to explain where the money is coming from and what it will be spent on. He's got some general numbers. I would like him to table the estimates that were put to the cabinet committee of what the real

costs and implications are. That information was asked for by the chair of AMO, to have this fully priced and costed out for the implementation. It's not here. You come here with this half measure to get us to endorse a bill that has been hastily drafted, ill-conceived and poorly consulted on—I guess I'm just so outraged that Ms. Scott is going to have to take over to ask any real questions.

The Chair: Thank you, Mr. O'Toole.

Ms. Laurie Scott (Haliburton–Victoria–Brock): It's kind of hard to follow that, actually—my colleague Mr. O'Toole, outraged. But my colleague made some good points. I'll clarify some of them, maybe, for you. Since the bill was introduced, as opposition parties, we've been saying this is a download to the municipalities, the landowners, unfunded liability. We took it out in committee, and you've heard that messaging loud and clear, consistently. The minister here today is an example of—at least you've listened. Now, where you got \$7 million, I'm not sure, but there's no question that the approach was wrong, it was draconian, it was heavy-handed. You've acknowledged you need more of a carrot. People want to work towards clean water. Where you came up with the \$7 million, I don't know. Maybe I'll ask you if that number just got kind of picked from the hat. It's a good first step, as the Ontario Federation of Agriculture has said. Is it anywhere close? Where did the \$7 million come from—the \$5 million for implementation and the \$2 million for education?

Mr. Wilkinson: I think that question was for me. I want to say to my friend, thanks for the question.

I understand that my good friend the member from Durham is on the horns of an exquisitely difficult dilemma about section 87.1.

Mr. Jeff Leal (Peterborough): He just came from the cottage.

Mr. Wilkinson: Yes. I know that my minister did not. She was working today, and we are very appreciative that she was able to find time in her very busy schedule to come to this committee and deal with a money motion.

We have said consistently, and this has not changed, that there is no one who can tell us what will be the cost of implementation, but we have a choice: Do we work with the landowners; do we believe in the concept of stewardship; do we say that we own the land but we also have a responsibility to the land; do we have an obligation as property owners to make sure that the common source of drinking water is protected? And what is the appropriate role of government?

It is, of course, difficult at any time for a government to say with assurance, prior to the scientific work that is being done, what that cost will be. We said very clearly to people, we have committed some \$120 million to ensure that the science that will inform all of this work is done in advance. That work is ongoing.

What we heard very clearly—and I say to my friend that you're right—is that people wanted their anxiety to be relieved, that the concept of stewardship and the provincial role be enshrined in this bill, and that's the amendment the minister has made.

As I said to Mr. Tabuns, and I can repeat, the \$7 million is a down payment. It is not the amount required, but it is a down payment. Even though we haven't got to that, we feel that there should be money set aside for the acquisition of sensitive land around intake protection zones, and there's been money that will be allocated in the 2007-08 year for that. We would not, as a government, presume the passage of this bill. It's up to the Legislature to get this bill through clause-by-clause. It's up to the Legislature to get this bill through third reading. We are not presuming that, but we are making a very strong commitment that there will be initially a down payment.

We were inspired by our friends in Manitoba. We had many delegations, particularly from OFEC, about what they did in Manitoba. In their trust fund that they created, they put in some \$300,000. We are allocating some \$7 million initially.

Here's the thing I think we all have to remember. The reason for this bill is there is anxiety that if there were, for example, a new government some day and this were not enshrined in legislation, it would be quite easy for another government to ignore stewardship. By putting this fund in the law, it means that all parties will be bound by it, or a future government would have to come into the Legislature and say, "We don't believe in stewardship." So I think that anxiety—and I look at the comments from so many stakeholders—is way down, because we've enshrined it.

I want to personally, on behalf of the government members, thank the minister for coming in this morning and moving this very important amendment, which I think will colour all of our subsequent discussions over the next two days as we deal with clause-by-clause.

The Chair: Thank you, Mr. Wilkinson. Taking that all parties have recovered, if there are no further comments—Ms. Scott?

Ms. Scott: If I could just follow up a little bit more. The money is going to be funded from the MOE, and we heard throughout the consultations that this should be a provincial responsibility. We have the source protection committees that are set up. When someone applies, if we want to use the approach we're going to go further into the permit official/risk management official change, are we going to be able to say that there's going to be a co-operative approach? We've dealt with farmers; we're not going to go on to their land. Anything above due diligence—the nutrient management plans, the environmental farm plans, which, combined, pay for at least 90% of the cost to the farmer and the landowner, this is enshrined in legislation. How much is the source protection committee going to be involved with the MOE? Do they have to submit the drafts of what people are asking for, for money, then approved by the MOE, or is it going to be directly to the MOE?

Mr. Wilkinson: First of all, just in regard to this, because we are dealing with 87.1—and I think some of the other questions will be addressed as we go through clause-by-clause and the amendments proposed by the

minister. But in this situation, I think the minister has wisely decided to call an advisory panel made up of the stakeholders that had issues about the stewardship fund because we don't presume that we know today exactly how that money should work. So what she has done is invited the stakeholders to come forward and to give her their best advice as to what is the best way one would prioritize and allocate the money under stewardship.

Again, to the question from my friend, it shows that the attitude of the government, the commitment of the government, to implementation is one of working with people and not against people. I think the stewardship fund is important to do that. I think the minister's approach about seeking advice from those who will be affected is the right way to do it. And though our source protection committees will be creating their plans, it does not diminish the responsibility of the government and the Ministry of the Environment, through this part of the act, to play a meaningful role in the lives of people who might be affected by the implementation of this act.

1020

As I think we were told many times, there is not a question of whether we should do this; the question is how we do it. I think the series of amendments we are proposing as a government go to ensuring what people told us repeatedly is going to happen, that people will buy into the implementation of this bill based on the principles of stewardship.

Ms. Scott: Okay. We look forward to further co-operation and the stewardship fund being put in the legislation, and we'll be supporting this amendment.

Mr. Leal: At the appropriate time, I'll ask for a recorded vote on this amendment.

Mr. O'Toole: I just wanted to sign off on this portion of the discussion by acknowledging that the government has indeed listened to the opposition—that's us—on two counts. First of all, there would never have been hearings if it wasn't for us, and can you imagine what would have happened? Leave that to the imagination of the public later on next year. The second thing is that this fund is directly as a result of the hard work of Ms. Scott and others and the stakeholders—the agricultural community, AMO. I want to put on the record—because I'll be mailing it out to them from Hansard, whenever it's printed—the good work that Ms. Scott has done, and the stakeholders from agriculture and rural communities and AMO and the federation etc. We've made the first step. Thank you very much.

The Chair: If there are no further questions—Mr. Tabuns.

Mr. Tabuns: I don't have questions. May I comment?

The Chair: Please.

Mr. Tabuns: It was very clear in the discussions and presentations that were made to this committee right across the spectrum, from environmental groups to farm groups to industrial groups, that there was interest in having funding here for incentives and for education. It's a useful amendment. It should have been in the original bill. It's a good thing that there's an amendment here today.

We'll have a chance to go over this again, but I do want to say to the parliamentary assistant and other members of the government that you have not put provisions into this bill to financially support municipalities, conservation authorities or other bodies that will actually have to implement, monitor and regulate under this bill. I believe that will be a profound problem, because it was very clear, again, from listening to the groups that made presentations, that their ability to actually deliver the goods as we see here is not there. They will not be able to deliver the goods. So it's useful to provide incentives and education funding, but if you don't have funding for the other portion of this, we will have situations that I've seen before on city councils—and I know some of you have had the opportunity, the privilege, of such service. If there's not enough money, you'll get one enforcement officer where you need 10. You will get part-time enforcement where you need full-time. You won't get the goods delivered. It's a fundamental problem with this bill.

The Chair: If there are no further questions, comments, debate, citations, we'll move now to the vote.

Mr. Leal: Recorded vote.

The Chair: It will be a recorded vote, as stipulated by Mr. Leal. I also advise the committee that—yes, Mr. O'Toole?

Mr. O'Toole: Just clarification, if I may. What are we voting on? The amendment?

Interjection.

Mr. O'Toole: I would put to you it's out of order to take that vote right now, and I'm asking the clerk. The reason is, there are so many sections prior to that section which may have implications with respect to how this would be clarified in the discussion. I think it should be voted on in sequence like any other part of the bill.

The Chair: Mr. O'Toole, I would advise you as well as all fellow committee members that I believe the committee has already received unanimous consent to proceed in this manner. I also take it from legislative counsel that this particular motion is not out of order.

Mr. O'Toole: We've been outfoxed again.

The Chair: Having said that, I will advise the committee that the motion itself is in fact a new section, for which reason the wording of the vote which proceeds now: Shall section 87.1, which is government motion 186, lately presented by Madam Minister Broten, carry?

Recorded vote.

Ayes

Leal, O'Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed. I declare section 87.1, government motion 186, to have carried.

Mr. O'Toole: Just a comment through the Chair: I appreciate your indulgence, as someone who has been away from the legislative process for a couple of weeks. Here's the deal: That section changed substantively and

purposefully this entire bill and its approach. What I mean is, normally those amendments are out of order. I'm not trying to be smart. It's such a substantive change. But anyway, it's up to legal counsel or wiser people than I who have looked at it. It substantively changes the approach of this bill totally. So it's probably in my view a moot point at this time. Thank you for the indulgence.

The Chair: Thank you, Mr. O'Toole. We'll now proceed to the presentation of our original motions in the original order. We begin with PC section 1, labelled as PC motion 1, and I invite members of the PC caucus to present that.

Ms. Scott: Everyone has the amendment, the motion, in front of them? Okay. We felt the current purpose statement in section 1—

Mr. O'Toole: You have to read it.

The Chair: Ms. Scott, I've just been advised that you need to read it to enter it into the record.

Ms. Scott: Okay.

I move that section 1 of the bill be struck out and the following substituted:

“Purpose

“1(1) The purpose of this act is to provide for the protection and stewardship of Ontario's water resources and aquatic ecosystems, considering the social and economic impacts of environmental protection measures and recognizing,

“(a) that Ontario's social and economic well-being are dependant upon the sustained existence of a sufficient supply of high quality water;

“(b) the importance of comprehensive planning for watersheds, with respect to water, land and ecosystems, on a basis that acknowledges and considers their inter-dependence;

“(c) that water resources and aquatic ecosystems require protection to ensure the high quality of drinking water sources;

“(d) the importance of applying scientific information in decision-making processes about water, including the establishment of standards, objectives and guidelines;

“(e) the need to protect riparian areas and wetlands; and

“(f) the benefits of providing financial incentives for activities that protect or enhance water, aquatic ecosystems or drinking water sources.

“Same

“(2) This act is one part to a multi-barrier approach to the protection of existing and future sources of drinking water.

“Additional costs

“(3) If the province requires that any business or farm or agricultural operation or any landowner go beyond their normal operating procedures because of anything done under this act, the province shall compensate them for any additional costs they incur.

“Impacts to be considered

“(4) In carrying out the purposes of this act, the minister shall consider the social, cultural and economic

impacts of any environmental protection measures that he or she is considering taking.”

Just as an explanatory, we felt that in section 1 the current purpose statement is too broad as it is currently stated and it may be interpreted to mean all water everywhere instead of focusing on the protection of municipal drinking water supplies. So the amendment will make the purpose of the bill more specific, while at the same time ensure that it's recognized that this bill is but one part of a multi-barrier approach. Any costs imposed on businesses, properties, owners, farms etc. over and above what they would normally do is borne completely by the province. The social, cultural and economic impacts of the application of this bill are taken into account at all times.

The Chair: The floor is open for questions or comments.

Mr. Wilkinson: In regard to this motion, I just want to read what section 1 says right now: “The purpose of this act is to protect existing and future sources of drinking water.” It is the contention of the government that that very simple but very clear and powerful statement is the best expression of the work of Justice O'Connor, so we will not be voting for the opposition amendment.

The Chair: Any further questions or comments?

Mr. O'Toole: I think it's important, because the purpose clause was the point of much disagreement. It's my understanding that the earlier drafts of the intention of the legislation was to examine in a progressive manner the various aspects of drinking water, first being the municipal, which would include the treatment plants and the systems and infrastructure to provide these to homes; secondly, I guess, the well area inspections and the regime of discipline there and the role of public health and the conservation authorities.

1030

Quite frankly, this amendment attempts to focus, as Ms. Scott said in her explanation, on protecting municipal drinking water systems first, and it's this jumping off into the broad area here without a real plan—\$7 million I guess basically is what they said this morning. I'm asking again here; I'd like all cabinet information that was put into making this decision to advance this money tabled here this morning. I'm asking for that because no one knows. It's been the question all along. What we're trying to do here is focus it down. I'm going to be harping on this all morning. Those are my comments, not really a question. I would ask for your support and ask for a recorded vote.

The Chair: Thank you, Mr. O'Toole. Are there any further questions?

Mr. Wilkinson: We have our esteemed legislative counsel here. The number of times the member from Durham has said that this committee has the ability to compel cabinet to reveal documents which obviously are bound by cabinet secrecy—

Mr. O'Toole: It's all secret.

Mr. Wilkinson: —and that somehow, in our parliamentary system where there is cabinet secrecy as part of

our form of government, this committee has the power—so I'd just like some clarity from Mr. Beecroft whether or not this committee can compel cabinet to actually provide these documents.

The Chair: Mr. Beecroft.

Mr. Doug Beecroft: First of all, this is an unusual location for that sort of thing to happen. There is a Freedom of Information and Protection of Privacy Act. It provides for access to certain documents. It sets up a process. Anybody—the opposition, the public—can make requests for government documents. There's a mechanism there for handling those requests, for dealing with appeals if people are unhappy with decisions that are made. There are exceptions in that act for certain classes of documents, including confidential advice to cabinet, things like that. But the way in which those issues are resolved is not normally the work of a committee like this. It's dealt with through the freedom of information system.

Mr. Wilkinson: That's very informative. Thank you, Mr. Beecroft.

The Chair: If there are no further questions or comments, we'll proceed now to the vote.

Mr. O'Toole: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: I declare the motion defeated.

We'll proceed now to the vote for that particular section.

Shall section 1 carry? None opposed? I declare section 1 to have carried.

We'll now move to the presentation of PC motion 2. To the PC caucus.

Interjections.

The Chair: Just to clarify, the PC motion is section 1.1.

Mr. O'Toole: A clarification administratively here. How can we vote on a section when there are further amendments on the section?

Interjection.

Mr. O'Toole: No, but I thought we already voted on section 1.

The Clerk of the Committee (Mr. Trevor Day): Right, and we did.

Ms. Kathleen O. Wynne (Don Valley West): It's a new section.

Mr. O'Toole: I understand. We're adding section 1, sub 1. This is 1.1.

The Chair: So an entirely new section after section 1.

Mr. O'Toole: Okay. Very good.

The Chair: Once again, to the PC caucus, presentation of PC motion 2. Ms. Scott.

Ms. Scott: I move that the bill be amended by adding the following section:

"Ontario Water Resources Act

"1.1(1) This act applies to existing and future sources of drinking water only to the extent that the Ontario Water Resources Act does not apply to the same water.

"Conflicts

"(2) In the event of an inconsistency or conflict between this act and the Ontario Water Resources Act, the Ontario Water Resources Act prevails."

This amendment is in response to the repeated calls to the committee to have a clear differentiation between water withdrawn and water consumed by the Ontario Water Resources Act. So it's a clarification on that.

The Chair: Mr. Wilkinson?

Mr. Wilkinson: I've looked at this. I can tell you that perhaps that's what your researchers have told you, but this would effectively gut everything that we have done on this file for some three years. To say that the Ontario Water Resources Act should have primacy over the Clean Water Act is beyond the pale. All of the work that we have done is to ensure that people's sources of drinking water are protected and that that is of paramount importance to the people of Ontario.

I say with respect that to somehow gut this bill and punt it over to the OWRA would defeat the intention of all of the work and all of the people who have come here, all of the stakeholders who have been advising your government, the previous government, and our government for all of these years. I don't think it adds any clarity whatsoever. I think it actually guts the bill, and I'm surprised.

I must admit, I looked at that first amendment and then I looked at this amendment and then I thought, oh, okay, now we know what's up. The question is, can this bill be diluted in any sense?

This is about strengthening the bill and doing more to provide the legislative tools to make sure that people's drinking water is safe. That's what this bill is about. I can assure you in the most strenuous terms that the government is not going to be voting for this because it would negate all of the work that was done. I can't believe the reaction that would come from all the stakeholders who have been consulting on this bill for so long.

The Chair: Thank you. Any further questions, comments?

Ms. Scott: I just want to comment that this was brought up at the committee meetings and the stakeholder meetings. So when Mr. Wilkinson makes these strong comments that this would gut the act, that's certainly not the way we see it, and I leave it at that.

Mr. Wilkinson: And I agree. The problem here is history. When we look at the number of spills that happened during the previous government that were not prosecuted by the Ontario Water Resources Act, if that is going to be the gold standard of how we're going to protect drinking water, if that was there—

Interjection.

Mr. Wilkinson: —if that was doing its work, Justice O'Connor spent so much time, heard so many people, listened to so much tragedy, to say that that is not the right vehicle. The Ontario Water Resources Act is not the appropriate vehicle to protect people's drinking water. This is this idea that somehow we can protect water by doing what we were doing. It has to change. To give the OWRA primacy—this bill is very clear: Whichever act, existing or planned, does the best job of protecting drinking water shall prevail. And then to say, "No, no, we're going to take one act, which is definitely not the gold standard, and that's the one that's going to have jurisdiction," I just think throws all of the work that we've done out the window.

Ms. Scott: I think that Justice O'Connor made the comment that the Ontario Water Resources Act and the Environmental Protection Act, with some strengthening, was what you could do for source water protection and you didn't need to bring in a separate piece of legislation and create another level of bureaucracy with regard to that.

Mr. Wilkinson: What he also said was that the only way to make this happen is to have a multi-barrier approach and to have stakeholders. There is no way that we could create the terms of reference, the assessment report, source planning protection committees and source planning protection plans by tinkering around with the EPA and the OWRA. We looked at it from a legislative point of view and said, "How do we make sure the intention of Justice O'Connor actually comes to pass?"

I can tell you that we looked at that recommendation, but we also read his lengthy dissertation about how one would do this, that you would have the minister set up a framework, you would go to the people who are sharing the same source of drinking water, you would pull them together, you would have them, with the help of the government who would provide all of the scientific data, identify where there are significant threats to drinking water and then have a way of implementing that. I'm very proud of the fact that we have put in the stewardship fund because that was, I think, a piece that was necessary, and obviously people wanted to have it enshrined in this act. But to give the OWRA primacy, that somehow that's going to protect municipal sources of drinking, I just don't see how that would do anything. If we were to pass this, we might as well all go home.

The Chair: Thank you, Mr. Wilkinson. Ms. Scott.

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Ms. Scott: The acts that did exist with the Ontario Water Resources Act, the Environmental Protection Act—you could have done the assessment without this act. You could have funded however you wanted to—it's conservation authorities right now. The bottom line is that this is a download to municipalities, and there were already protections in there.

Sure, we need source water protection assessments and that could have been done under existing legislation. You didn't have to do a new bill. Anyway, I leave it at that for debate.

Mr. Wilkinson: We found out that we had things like reg 170. Reg 170 is a perfect example of a one-size-fits-all, top-down model. After all we've done to try to make sure that we actually have adequate funding for nutrient management and to fix up reg 170, the idea that we as government would pick up the torch from you and come up with an MOE top-down-driven process, instead of a bottom-up process from the groundwater up—that's what this bill is all about, how to get people to willingly implement and keep their common sources of water. I can't see any way other than the bill we've put forward.

Ms. Scott: It was hardly a willingly co-operative approach when you heard from all the people at the committees about the draconian, heavy-handed, reverse onus—you're accusing me of being guilty till I can prove you're wrong? That wasn't a co-operative approach. You've heard all the anger throughout all the committees. You saw all the protest. This bill was not going to be co-operative at the start, and it was going to be funded by the landowners and municipalities, not by the province where the responsibility should stay.

Mr. Wilkinson: Now, I say to my friend, you and I weren't here, most of us weren't here, but I know your colleague beside was here. The approach our government has always taken is that there has not been a single major piece of legislation introduced by our government that has not been amended. We don't start with the process that our bill at first reading is the be-all and end-all. The debate, the consultations and this process are all about democracy. I think if we were to look back at the previous eight-year period we would find a totally different approach that was taken by the government of the day, which didn't go out and have committee hearings across Ontario—right?—which used to come in here and just ram the bills.

I've talked to my colleagues who were here today. This is an open process. So if we are guilty of actually listening to people and changing the bill, then call me—I'm proud that we're doing this. That's the whole process. That's why we're here. We never said at first reading or at second reading that the bill was perfect.

Ms. Scott: First of all, it was the opposition that forced the travelling committee. We're glad the government agreed, so you could go across the province. We asked for the travelling committees.

Mr. Wilkinson: So did we.

Ms. Scott: Anyway, I say that if you had consulted with the public more before you brought in the legislation, there would have been a lot less anger out there in rural Ontario.

Mr. Wilkinson: I just think there are a lot of people who, for partisan reasons, were stirring it up and spreading misinformation about the bill. And I'm so glad that so many groups like the Association of Municipalities of Ontario, Conservation Ontario, the Ontario Federation of Agriculture and the Ontario Farm Environmental Coalition all think that our amendments are exactly where we should have landed on this bill.

Ms. Scott: We're only at 1.1 so far in the amendments, so we'll see what the rest bring.

The Chair: Quite right, and, Ms. Scott, there are 223 amendments remaining.

Ms. Scott: That's not good.

The Chair: If it is the will of the committee, we'll now proceed to the vote on PC motion number 2.

Mr. Wilkinson: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: I declare PC motion 2 to have been defeated.

We will now proceed to PC motion 3, which is for the introduction of section 1.3 as a new section.

Ms. Scott: I move that the bill be amended by adding the following section:

"Scientific standard

"1.3 Any decision or action taken under this act shall be based on scientific testing, using empirical methods and resulting in quantifiable results."

This amendment is a response, again, to the numerous concerns we heard during public hearings that the government was not basing its decisions on clear science available, and this amendment would enshrine the tenet of decision-making based on science in the bill.

The Chair: Any further questions, comments?

Mr. Wilkinson: Since we don't want to be here till midnight, I would say that I disagree with the member. I think our entire process has been transparent and based on science.

The Chair: Thank you.

Mr. O'Toole: We're dealing technically with the sections of definitions, etc. When you look at the bill itself and the language, the vagueness of the bill, "may cause"—in law that's not a clear, unambiguous expression, "may cause a risk to the environment," or "the water" or whatever.

Those are just not defensible in terms of what this amendment is attempting to do: to put some strength and legitimacy behind the individual who has been charged with potentially contaminating or causing a risk to the source of water, and the inspector says that, the person on the site says that. What we're saying is, the test here would be the science itself. That's really a fair-minded way of dealing with this and setting up a process to resolve these disputes. Some technician with a degree or something like that is sort of stating that my wellhead or whatever may be causing a risk and charges me, and now I'm guilty to defend that. What we've got here is a mechanism to make sure there's some legitimate, valid, objective way of resolving disputes. We're saying that there's a scientific standard. The scientists at Guelph and other universities can come up with these standards, but I'm just asking for a little bit of a response here from the

parliamentary assistant. Am I to assume that some clerk arriving on my property is the law and the standard? Is that kind of what's going on here?

Mr. Wilkinson: I say to my good friend, who has spent more time scaremongering on this bill than almost any other person in the Legislature, that you're absolutely wrong. We have said consistently and are paying for the science that will inform this bill, and I can tell you the whole concept of having these people from away, the whole idea of having a source protection committee made up of people who are actually drinking the water—I have great faith in the source protection committee that, informed by the science work that's being done, fully paid for by the McGuinty government, I might add, we will arrive at a point where anyone who's affected by this bill will not have a problem with the concept about whether or not there is a threat. The question is, how do we best mitigate that? How do we take something that's significant and reduce it, and how do we monitor it? All of that is based on science. The bill itself is inherently precautionary. It's part of what Justice O'Connor was saying: It is but one part of a multi-barrier approach to keep our water safe.

The Chair: Thank you. Taking it as no further questions and comments, we'll proceed now to the vote.

Interjection: Recorded.

The Chair: Recorded vote. The question is, shall section 1.3, the first PC motion 3, carry?

Ayes

O'Toole, Scott.

Nays

Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: I declare PC motion 3 to have been defeated.

We'll now proceed to consideration of PC motion 4.

Ms. Scott: I move that the bill be amended by adding the following section:

"Interpretation, onus of proof

"1.4 If the minister, a source protection committee, a source protection authority, a municipality or any person or body acting under this act asserts a fact or relies on an assumption, the onus of proving the fact or assumption lies on the person or body who asserts the fact or relies on the assumption and not on a landowner or any other person affected by the assertion or assumption."

This amendment obviously aims to eliminate all instances I mentioned earlier where reverse onus is placed on those affected by the bill. In Ontario, in this day and age, I think it's completely unacceptable to implement a bill based on the idea that those accused are guilty until proven innocent. You heard that a lot in the public committee hearings: that it was questionable whether they'd even be aware if their property was assessed and

what that assessment said, and that there wasn't going to be an appropriate appeal mechanism for them.

Mr. Wilkinson: Charitably, I can say this is well-intentioned, but if I'm not charitable I would say, "You haven't read the entire bill," because if you read through the entire bill and this whole process, you will see why this amendment is unnecessary and actually would dilute the bill, which is not what we're about. We're not about diluting the bill, and we're not going to sit here after all of this work and dilute the bill. So I just want to say to the member, just in case we haven't been able to read right through the entire bill, that I believe that this, if we passed it, would run contrary to the intention of the process of Bill 43. It's a process which is meant to be protective and consultative; it's not supposed to be argumentative.

It's also an unnecessary provision because where proceedings are authorized under the bill, such appeals to the Environmental Review Tribunal from decisions related to risk management plans under part IV, the tribunal procedure already provides for this. So under the law already, if there's an order and someone doesn't like that, they appeal it. Generally, where a public authority is imposing a requirement on a person and a person challenges that requirement in an appeal, it's the public authority there that has the onus of defending the requirement on appeal. So we already have a mechanism to make sure that there isn't reverse onus. There's already a mechanism. The person, if they decide that they disagree and appeal it, take it to the Environmental Review Tribunal, and it's not up to that person. They've asked for an appeal. It's up to the public authority—in this case, the source planning protection committee. They have to go to the ERT and prove why they think what they're doing is reasonable. So to now put it in the bill and say, "No, we're going to have another process," in my sense would turn all the environmental law we have in this province on its head.

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Mr. O'Toole: There's a very important distinction between the previous section, which the Liberals voted against, which was to put some science into it, and then this one, which is on the onus-of-proof provision in the early purposeful parts of the bill. But quite contradictory to what the member has said, section 88 is worth a second look here, because it exempts from any appeal—I'll just read section 88, basically the no-remedy section: "No costs, compensation or damages are owing or payable to any person and no remedy, including...." So this is the access to justice that you have provided which you're referring to.

It goes on to say in subsection (5), "Any proceeding referred to in subsection (3) commenced before the day ... dismissed, without costs...."

Subsection (6): "Nothing done or not done in accordance with this act or the regulations, other than an expropriation...."

So the whole thing here is that there is no access to dispute resolution in a clear, fair-minded way. What

we're asking for here is that the person entering the property, making the claim and putting the charge on some poor agricultural person or some person in rural Ontario, in Timmins or wherever, who is going to be left with a bill and no mechanism, no structural dispute resolution process here, no access to the courts, access to consultants in agronomy and the various sciences, and a \$25,000 bill later, because some person was offended by the barking dog and said, "That truck there is parked too close to the well and may cause..."—what we're looking for here, with all due respect, is a process.

In re-examination of what you said in response to Ms. Scott's amendment, you're actually not being quite forthright with the people. Read section 88. Have you read it? Mr. Chair, I question whether or not he understands this bill. I'm quite surprised, frankly. He's reading the notes carefully. I see some of the clerical people here from the ministry coming up and giving him notes that get him back on track. Some of his theatrical training there is getting in the way of doing the job.

Mr. Wilkinson: If we want to jump to section 88, that's wonderful, Mr. Chair, because I have been reading. I've read section 88, but I've also read Hansard. The previous government brought in the Oak Ridges Moraine Protection Act, and in the Oak Ridges Moraine Protection Act there is a section very, very similar to section 88. And you know who voted for that? I just happen to have Hansard. What was the day? Oh, December 3, 2001. And who do we have voting for the bill? Why, it's the member from Durham. So perhaps back then he didn't have a concern and perhaps now he does have a concern.

I say to the member, I can tell you that there is consistency here, but there's a change, and that change is the fact that this government has enshrined a stewardship fund so there is balance. What people have said repeatedly is that there needs to be a balance. I'm so happy that our minister was able to attend first thing at this committee hearing and make sure that that balance is enshrined in this act, and I'm glad we were able to vote for it. And I'm particularly glad that the opposition voted for it as well on a recorded vote. I think that's wonderful. I think that would be somewhat different, because particularly members like Mr. Barrett, Mr. Murdoch and Mr. O'Toole are going to have to square their voting record for the Oak Ridges Moraine Protection Act, because, if I recall, there were people who had concerns then and they were ignored.

I think we're very clear on this bill, and this place has a very long memory, indeed.

Mr. O'Toole: Again, hopefully these recorded discussions are fruitful and will move to correct or inform people of the process here. Yes, in fact the Oak Ridges moraine—I'm pleased that the government members, who are actually not government members, they're just members, because to be a government member, you have to be in cabinet, okay? Mr. Wilkinson was partially in cabinet at one time.

Mr. Wilkinson: I just answer questions.

Mr. O'Toole: I guess the point is that, yes, I'm flattered to say that you did copy the Oak Ridges

Moraine Protection Act. What was missing—we set up the Oak Ridges moraine trust fund, so there were monies there to resolve issues and disputes. There's a process. There's a review process as well. This has none of that acquiescence to the general public, who don't follow this. What we're looking for here is not to weaken but to strengthen the access to the public.

Yes, I appreciate that you've listened to us and our stakeholders—agriculture and AMO and others—and set aside a modest amount of money. You're reluctant to say where you're going to get that except you'll just raise the taxes; I understand that. What I'm saying, though, is that this portion here is the two sections that we've talked about. One is the scientific clause, which would set about a regime of rules to say whether or not this is an enforceable breach of the act. The other one is to make sure that the ministry is fully engaged with the municipalities. It says here that to rely on any assumption, the onus is by individuals made in the prosecution on this bill.

Yes, I did vote for the Oak Ridges moraine. Mr. Tabuns would know. The NDP actually started those consultations in the early 1990s, and Mr. Rae, who's now going for the leadership. He'll probably get it. I would say that they did not have the courage to go forward. We went forward with the bill and, yes, under good advice there were amendments made and it is now the law. There is a dispute resolution process and there's a fund to resolve and acquire lands: the Oak Ridges moraine trust fund.

Your greenbelt legislation, though, is another piece that's going to cause you some grief. There's still no process there. I see the same strategy here in this source water thing. There's no money, there's no dispute resolution process, there's a lot of control by the ministry and all the responsibility has been downloaded. So if you're standing behind this as a good piece of work, then you're standing on a pretty fragile structure; let's put it that way.

The Chair: Any further questions or comments or repatee of any description? Seeing none, we'll now move to the consideration of PC motion 4. Shall section 1.4 carry?

Interjection: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: I declare section 1.4 to have been lost. That's PC motion 4.

We'll now move to consideration of PC motion 4.1, for which purpose recent hot-off-the-press amendments have been distributed by the clerk. I now invite Ms. Scott to present it.

Ms. Scott: I move that the bill be amended by adding the following section:

“Existing aboriginal or treaty rights

“1.5 For greater certainty, nothing in this act shall be construed so as to abrogate or derogate from existing aboriginal or treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982.”

This amendment is intended to ensure that the historic rights of Ontario's aboriginal peoples are not impacted either directly or indirectly by the provisions of the bill.

The Chair: Thank you. The floor is open.

Mr. Wilkinson: We won't be voting for this because it's redundant under constitutional law.

Mr. Tabuns: It is true that imitation is the sincerest form of flattery, and I'm glad that the official opposition has looked at the amendment we put forward and has brought forward their amendment, which reflects our wording.

I'm very happy to support this. I hear the comments of the parliamentary assistant. I understand that when the parks bill was under discussion, the government in fact voted in favour of a non-derogation clause. I had the opportunity this weekend to talk to native activists, and for them, inclusion of a non-derogation clause in this bill is an important factor. I think the government would make a mistake to vote against this amendment. I believe we have the responsibility to make sure that aboriginal rights are protected, and I think we should proceed with a vote on this motion. I will just note at this time, Mr. Chair, that when the vote comes up I would like it to be recorded.

The Chair: Thank you, Mr. Tabuns. Taking that as the will of the committee—Mr. O'Toole?

Mr. O'Toole: I think it's important and maybe a bit sensitive. When I look at the solutions or the remedies that are necessary in Caledonia, it's to respect the rights of First Nations persons at the very broadest level. It's in that sentiment that I would ask the members to consider this friendly and meaningful amendment and ask, as Mr. Tabuns has said, for a recorded vote. It should be reflective of the purpose here. Constitutional or otherwise, if it's redundant then it serves not to weaken but to strengthen, just to restate your support for those individuals' rights.

Mr. Wilkinson: I take the comments made by the members of the opposition and, as a result, since this has just been walked on, there are two things that we could do and I leave it up to you, Mr. Chair. I'd be more than happy to revisit this section somewhat later in the day, after I've had a chance to speak to our people from the ministry—

Mr. O'Toole: The staff is going to tell them how to vote.

Mr. Wilkinson: No. You want to keep this door open and I'm saying that I'm prepared to spend some time to make sure that we get this right, and the door is open. Or, if we don't have unanimous consent, then I would move for a five-minute recess. So we have a choice here. Do

you want to keep going or do you want to stop? We could stand it down and get back to it.

Mr. O'Toole: I just want to respond. I think that many of us were quite surprised this morning by this major amendment moved by the minister herself, who came back from the cottage to move the amendment, and we were able, with very little consultation or input from us, to agree with that because it's the right thing to do. This, I put to you, is the right thing to do.

You're waiting for the minions here to give you your marching orders, how to vote on this. Just like Mr. Tabuns—he just got it. He supports it; he gets it.

Interjection: You don't need information from anyone. You're all-knowing.

Mr. Wilkinson: At the expense of collegiality, Mr. Chair, I ask for a five-minute recess.

The Chair: Is it the will of the committee to have a five-minute recess? Yes. A five-minute recess.

The committee recessed from 1102 to 1108.

The Chair: I invite committee members to resume consideration of PC motion 4.1. If there are any further questions and comments, the floor is open. Any further comments on PC motion 4.1? Mr. Tabuns.

Mr. Tabuns: I guess I'm just surprised that we had to have this recess, given that my amendment has been in the package for a little while now. I'm hoping that, having consulted with staff, there will be a decision on the part of the government to support aboriginal rights.

The Chair: Thank you, Mr. Tabuns. If there are no further comments, we will proceed to—Mr. O'Toole?

Mr. O'Toole: There's going to be a recorded vote on this. We realize that it is pretty much a repeat motion of Mr. Tabuns's NDP motion later on in the package, so there was advance notice. This wasn't "walked on" as he said there.

Mr. Wilkinson: Mr. Chair, you're going to help me out here because I'm just taking a look at the package that I have—oh, my friend Ms. Wynne is giving it to me.

Could I ask Mr. Tabuns, can you refer to your motion. We're dealing with this first, and I don't seem to see it here, so we're going to try to be—

Mr. Tabuns: Section 2.1, and it's number 20 in your package.

Mr. Wilkinson: Number 20. I'd say to the clerk, then, why did we have it that this should be dealt with as the 20th matter and now it's the 4.1 matter? Maybe the clerk can help me out, because this is—

The Clerk of the Committee: The PC motion was actually numbered section 1.5.

Mr. Wilkinson: Right.

The Clerk of the Committee: Therefore, it would fall after the 1.4 in the amendments that we have. The NDP motion was numbered according to which section of the bill was being affected.

Mr. Wilkinson: Oh, I see. So that's why they're trying to put it in here. Okay.

Well, Mr. Chair, since I'm particularly a good government member, I would ask for all-party support just to stand down this section. I have no problem coming back

to it. I have the exquisite job of having a minister who is a constitutional lawyer, so I'm just going to seek a bit more advice. Then we'll also be able to deal with your motion as well, Mr. Tabuns. To make sure that we're consistent, I would feel much more comfortable—well, it's up to the committee—to stand this down momentarily. We could move on to the next section and we'll come back to it. It will also be consistent.

The Chair: Is it the will of the committee to stand down PC motion 4.1?

Mr. O'Toole: Chair, respectfully, we took a recess for consideration. Now, if he's waiting for the staff to tell him what to do, I understand that, that he hasn't got a mind of his own and he's—

Interjection.

Mr. O'Toole: Respectfully, I—

The Chair: Mr. O'Toole, just to be clear, I've asked for unanimous consent on the standing down of PC motion 4.1. Do we have unanimous consent?

Mr. O'Toole: No. I'm not standing it down. I don't believe that we should stand it down.

The Chair: We do not have unanimous consent and, if there are no further comments, we're going to proceed to the—

Mr. Wilkinson: I do have some comments, Mr. Chair.

Mr. O'Toole: A recorded vote.

The Chair: Mr. Wilkinson.

Mr. Wilkinson: It's not so much about getting advice, but I think it's important for legislators to be informed. I must admit, the turning point was here when Mr. Tabuns talked about his NDP motion number 20. Really, the wording is identical.

My understanding of it is that it is true that this, from a constitutional point of view, is redundant because nothing that we can do in this place can actually change the Constitution Act. But, as a result, I understand a precedent was set in this place in regard to the parks bill. The question is, can we add further strength and clarity? So I think that has to do with the issue here: Is it acceptable to the government that we use this to add clarity to prevent—even though I think our opening position is correct that it is redundant. But when it comes to an issue of First Nations, it's very important that we're sensitive to those issues. We know what happens when there is a lack of sensitivity, and that is not the intention of our government, not to be sensitive to those issues.

I would ask my friend the member from Toronto—Danforth, were you part of the discussions about the non-derogation clause being added to the parks bill?

Mr. Tabuns: I was not, but I do talk to members of my caucus from time to time. I understand that your party had a motion forward essentially having the same wording and, just because of sequence, the Conservative motion was taken first and was adopted. So your party has already accepted the idea of having a non-derogation clause in the bill.

Mr. Wilkinson: But what I'd ask, then, for my friend, the NDP did bring in NDP motion number 20, which deals with section 2, so I know that you gave a great deal

of consideration. The official opposition has come in and said that this also needs to be added to section 1.5. So, obviously, when you were looking at it, you decided that we didn't need to have it in section 1.5, but it needed to be in section—sorry—

Interjection.

Mr. Wilkinson: In other words, it wasn't an NDP motion for section 1.5, but it should be for section 2.1. Was there some reason why you didn't think it should be in 1.5? If we're going to be clear, if we're going to send a signal out, we want to make sure it's a consistent signal from this committee.

Mr. Tabuns: My recollection is that when we took it to be drafted by legislative drafters, that's where they suggested it be allocated. We can ask legislative counsel, but I don't see any difficulty in having it in "purpose" and in "definition."

Mr. Wilkinson: Okay.

The Chair: Ms. Wynne.

Ms. Wynne: Mr. Chair, I've sat on a number of committees of this Legislature—or I've sat on this committee where we've dealt with a number of pieces of legislation where there's been a discussion about non-derogation clauses. Actually, to the legislative counsel, if we could have some explanation of the reason why it's very unusual in a provincial piece of legislation to have a non-derogation clause and the impact on the federal jurisdiction, that would be very helpful because this issue has come up many times and it is unusual.

Mr. Beecroft: There are two questions that I'm going to try and deal with; first of all, the question of the numbering of the section. There's no particular magic to the numbering of the section. One party might put it between sections 1 and 2; another party will put it between 2 and 3. There's no difference in meaning because of that.

Generally speaking, when we write statutes, the first section is the purpose section, the second section is the interpretation section, and then you get into things like non-derogation provisions, application provisions. So probably, if starting from scratch writing a brand new statute, this sort of provision would go after section 2, not after section 1. But there is no difference in meaning and the committee is entitled to do whatever it wants to do as far as where they put the section, if they're going to adopt the section.

Secondly, on the question of when these sections are used, the Constitution specifically recognizes aboriginal treaty rights. There is nothing that the provincial Legislature can do to take those rights away. That's ingrained in the supreme law of Canada: the Constitution. So, generally speaking, there's no need for provisions like this. Most Ontario statutes do not have provisions like this. They are occasionally put into individual statutes, usually because there's perceived to be a particular kind of example. For example, I'm just speculating, but in the provincial parks bill we know that aboriginal people have the right to hunt; it's one of their traditional rights that's protected by the Constitution. When you have legislation

that specifically deals with the question of hunting in provincial parks, then you want to make it clear to everybody that even though there's a general prohibition on hunting in provincial parks, we recognize that this doesn't detract from aboriginal rights that are recognized in the Constitution. So is there anything in this bill that someone would think raises a clear conflict with aboriginal rights? I don't know. That's up to you to decide.

The Chair: Mr. Wilkinson, and then Mr. Tabuns and Mr. O'Toole.

Mr. Wilkinson: I would ask the official opposition, which of the constitutionally protected aboriginal rights do you feel need to be—what is the purpose of this? As Mr. Beecroft was saying, what is that constitutional right already enjoyed by our First Nations fellow citizens where you feel there needs to be greater clarity so that this bill actually needs to have a motion which legally is redundant?

The Chair: Mr. Tabuns, your floor.

Mr. Tabuns: I'd like to speak to that in a second, but I do want to ask, is there any difficulty in having this clause in two places in this bill?

Mr. Beecroft: Yes.

Interjection.

Mr. Tabuns: Can you explain—thank you, those in the crowd.

Mr. Beecroft: The two proposed motions are very similar.

Mr. Tabuns: Yes, quite true.

Mr. Beecroft: It would be very hard to discern any difference in meaning, but they do use slightly different language.

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Mr. Tabuns: For clarity in one. Yes, go on.

Mr. Beecroft: If you're trying to say something, it's better to say it once rather than to say it in two different ways in two different places, because that just confuses things.

Mr. Tabuns: That's fine, Mr. Counsel.

Mr. Wilkinson: It's the nature of this place.

Mr. Tabuns: The nature of this place is that I hear a lot of stuff a million times. I've got to tell you that right now. Okay, I don't have further questions for legislative counsel.

To the parliamentary assistant: I assume that when your team and when you personally went through all these amendments, you had already gone through my amendment, so what position did you take at that time? Why, now that we've cited the parks act, do you see this as different?

Mr. Wilkinson: Because through all of the testimony we've received—written submissions from First Nations, any of the discussions we've had to date—we have not had a group that has identified which already constitutionally enshrined right they have as a member of a First Nation is in any way in jeopardy because of the Clean Water Act. Now, if we could get some clarity from the opposition—and I would have asked the same question

of my friend from Toronto–Danforth when we dealt with NDP motion number 20.

Mr. Tabuns: Okay.

Mr. Wilkinson: The other problem we have, because we were aware of the amendment to the parks act, is that the wording is not identical. As Mr. Beecroft was saying, it's very important from the government perspective that if we're having pieces of legislation, those bills are exceedingly consistent. Despite the fact that politicians rarely are, our legislation is supposed to be.

Mr. O'Toole: The question has been raised under what particular section we're concerned—and I'm not contradicting legislative counsel; I'm saying I think this is the appropriate place to put it. You ask what sections? Well, if you look right at the beginning under the general provisions in part 1, in the definition section, it says, "‘Activity’ includes a land use." It's the first one that we're defining. I'd say, "activity," i.e. planning, i.e. subdivision, i.e. Caledonia. What roles, responsibilities, rights and duties in this area and otherwise are required?

If you go along further, there are a number of sections—"local board." Are there appropriate occasions in a source water protection area where aboriginal representation on those boards should be present? It's a local board. "Justice"—there's a whole discussion on aboriginal justice and dispute resolution.

What we're saying here, fundamentally, is very important in terms of justice and process. It isn't just section 2, which is really a subsection. In addition, I believe it belongs right in the definition section itself, if you really want to deal with this issue as a government. Or do you want to skate around it, as we've been hearing, and avoid or ignore what's going on in Caledonia? You're just spending money; you're not solving the problem. "Permit inspector," "permit official," "‘planning board’ ... under section 9 and 10 of the Planning Act," "prescribed instruments," and there should be another section added there, the whole section to deal with aboriginal rights, the Indian Act. So there are a whole bunch under the definition section. Mr. Chair, I would ask you to put the question and let's get on with it. We can dance around this issue or we can vote, and have a recorded vote, and just see where we stand. Let's get moving forward with this bill, the way it's written, however hastily that's been done.

Mr. Wilkinson: I thank the member from Durham for trying to bring some clarity to the issue. Now, I didn't hear the answer as to which constitutionally protected aboriginal right is in jeopardy, other than in the broadest sense, so I take his point about why he thinks it should be in the purpose statement. I think our position would be that if we were to do this, it would be very important that it be consistent with other pieces of provincial legislation which tread on the issue of constitutional law. I mean, the same supreme law that we have in this land applies today, as it did yesterday and as it will tomorrow. But we take the point.

It does raise the issue that if we put it in this section, we would, by definition, I think, have to collectively

agree not to move with NDP motion 20, because as Mr. Beecroft said, we shouldn't be putting this down twice; we should be putting this down once. If we want to put it into the purpose statement, our requirement is that we can't vote for this as drafted, because it isn't consistent with the other piece of legislation, but we could walk on, as just happened with 4.1, a government version that would be identical so that we would not have any problems of last-minute drafting of bills here on the floor. But I think Ms. Wynne has a comment to make.

Ms. Wynne: Yes, thank you. I'd like to make a comment.

Mr. Chair, I understand that in these committee processes there's a back-and-forth partisan debate that happens, but I think we're dealing with a very delicate issue here. If legal counsel has told us that there's a redundancy in putting into provincial legislation this kind of clause, my concern would be that if we start doing this on the fly in committee, we will have to do this in every piece of provincial legislation.

In a scenario where there's another government in office, it may very well be that they won't be so happy with having mucked around in that constitutional jurisdiction. So I have a real concern about starting to put this clause in every piece of legislation when there isn't a specific treaty right or concern around existing rights of aboriginal peoples. As I said, I've been on committee where this issue has come up a number of times, and my understanding is that there's redundancy, that it's not needed, and that unless there's a very specific treaty right that we're talking about—even then it would be redundant in provincial legislation. But I really have a serious question and I would like to hear from staff if there's a concern that if we start putting these clauses in one piece of legislation where it's absolutely not needed, we are setting ourselves up for a future government—not just this government, but any future government—to have to put this clause in every piece of provincial legislation.

I really need to hear an answer on that before I can vote on this, because this is not a flippant, partisan issue. This is something that has to do with the relationship between the provincial government and the federal government in the Constitution, and I really think we should take it seriously. So I'd like to hear from staff on that.

The Chair: Thank you, Ms. Wynne. I'll invite staff to come forward, and we have Mr. O'Toole in the meantime.

Mr. O'Toole: In a general sense—and I take exception to the tone and comments by the member of the government side. The reason I say that is that you are implying that it's somehow disingenuous, accusing both the opposition Conservative and the NDP.

If you want to know specifically, I would ask you, if there is an inspector coming on property, as is laid out in this legislation, would they be allowed to enter into a treaty property? If you can't answer that question, then what about the rights of other people, other citizens of this country, and someone coming on their property without due notice or cause of action?

Interjection: There has to be notice.

Mr. O'Toole: You've raised the issue of rights here, and I'm putting to you that that has been fundamentally the issue from the beginning with this legislation. It exempts the government, under the will for the common good, from being accountable to any process here about having a search warrant or a court order to come on property. In fact, the reverse-onus provision, which we tried to introduce in the previous amendment, is another case where it's incumbent on us to make sure—you're right—to protect the established rights of people. Property rights have been a huge issue in most of what you've done.

Now we've got the First Nation issues coming up here, and it's going to be before the courts again. Caledonia is a perfect example of how you've tried to hush this thing up. You've actually been skating around it, gingerly paying off whoever you have to pay off. We're trying to deal with substantial rights not just of First Nations but of individuals who are residents and citizens of this province and this country.

So I'm sort of disappointed by the tone, but since you've raised the ante here, we're saying that the rights of all people, for someone coming on my property and me having to justify that my well, my aquifer or whatever—where are the rights for people in this thing? Where are the rights? You answer that question, and then we'll vote.

1130

Ms. Wynne: Mr. Chair, are we going to get staff to come forward to answer my question?

The Chair: Yes. A government member has requested government staff to come forward, and they are invited forthwith. The floor is now Mr. Tabuns', though.

Mr. Tabuns: I want to note first, for the benefit of the government side, that the Provincial Parks and Conservation Reserves Act, 2006, recently adopted by this government, includes wording in section 4 that is exactly the wording that I have in my amendment. So I just took the wording that you folks have adopted. It says:

"Existing aboriginal or treaty rights

"4. Nothing in this act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982."

So we just took the parks act wording that you've already voted in favour of and applied it to this act.

Two things I want to note: One is that—

Mr. Wilkinson: That's inaccurate, because you have to actually read the bill that was passed, and it didn't stop with that. It actually cited in the Constitution Act specifically which chapter and subsection this applied to, if you take a look at that bill. That's what's raising the issue.

Mr. Tabuns: I'm happy to pass this over to you.

Mr. Wilkinson: I've got a copy of it here, too.

Mr. Tabuns: So show me where it talks to the other parts of the Constitution.

Mr. Wilkinson: But it goes on to say, "recognized and affirmed in section 35 of the Constitution Act, 1982," chapter 12, section 4. So it's specific, is it not?

Ms. Wynne: This is not.

Mr. Wilkinson: This is not. You just say, "Constitution Act, 1982," but you don't go and cite the specific—my understanding is that it deals specifically with that treaty right, that there is a fear that there would be, under the parks act, some conflict, and it adds a certain clarity, though it is redundant.

Mr. Tabuns: As far as I can see, number 4 does not go on to detail the elements of the Constitution Act. Number 5 in this act talks about a number of definitions, but that is not the Constitution Act.

Mr. Wilkinson: Again, what I would put on the record is, we took a look at this. We have amendments that have to deal with First Nations that are part of our government package that we've already proposed. It's the position of the government that that is the best place for us to address the issues of the First Nations, not in section 1, not in section 2, but in the government motion, because we fear that we are treading on ground which would make the water muddier, not clearer. That's why we have said consistently, as we did with the parks act, where there was some rationale, specifically what are those rights.

I know my friend from Durham is coming up with, "Well, it could be every right." The Constitution Act is the supreme law of the land. There's nothing we can do in the province. We can add clarity, but we can't rewrite the Constitution Act or bind this government and somehow abrogate the common law.

Mr. Tabuns: I understand that we aren't changing the Constitution Act, but when First Nations have asked for a non-derogation clause to be included, their concern is that they want a reinforcement of their rights to be recognized in the act so they do not get caught up in expensive, time-consuming and problematic litigation. They want those who are directed by this act—the provincial government, its bureaucracy, its civil servants—to understand from the beginning that First Nations' rights are not extinguished. Having this section in the act gives them that clarity and direction.

Mr. Wilkinson: But when you took a look at this, you said it shouldn't be in section 1, though you did say it should be in section 2. I'm trying to recall, of all the testimony we had from First Nations, both oral and written, which group came to this committee and said to the government, "This clause needs to be in the bill." That's what I'm missing. You've got to connect the dots here for me as to which group. So for us—

Mr. Tabuns: Chiefs of Ontario and the AIAI, the Association of Iroquois and Allied Indians. They wanted the non-derogation clause.

Mr. Wilkinson: And we believe that we've addressed their issues in our amendments, but we now have staff here and they want to address to the necessity for us to be clear in regard when we're drafting legislation.

The Chair: All right. I'll open the floor now to ministry staff. If you might identify yourself for the purpose of Hansard recording, and please proceed.

Mr. James Flagal: My name is James Flagal. I'm counsel with the Ministry of the Environment, legal services branch.

I would just echo the comments legislative counsel made. It is not legally necessary to put these types of provisions in legislation. Every piece of legislation has to be read consistent with the Constitution, and definitely, if you started including this type of provision in legislation, the tendency would be to start including it when it's not legally necessary. It's usually important just to include provisions which are necessary for the legislation to operate in this regard.

The Constitution is definitely something that always prevails over any act, and every piece of legislation has to be interpreted consistent with the Constitution. It's similar to saying that you would have to read the legislation in light of provincial powers that are delegated under section 92 of the Constitution Act, which is where the province gets its powers. That's certainly not anything that's ever put into legislation, because it's always understood that any piece of legislation that the province passes must be grounded in section 92 of the Constitution Act, 1867.

The Chair: Thank you. The floor is open for questions or comments.

Mr. Wilkinson: We're prepared to vote.

Mr. O'Toole: Just one further clarification. It's my understanding from the discussion—I appreciate it; it's been time well spent in terms of educating us technically. It's my understanding, though, that they have provided the non-derogation clause in the parks act, so the precedent has been set, whether correctly or incorrectly, as counsel has given us the advice that it would be the wrong thing to do because then it would be everywhere. It appears you've already made that error.

In fact, it appears to me you've made a lot of errors in this bill. I urge you quite sincerely, take the time under the direction of your—the bureaucrats here are actually telling you what to do. Go back to the minister and say—and she's a very intelligent and capable person whom this has been foisted on. I would say that this bill should go back to the House leaders; it's that poorly drafted.

The rights are the issues here, and they have been all along, not just for First Nations. It's for all of the same individuals who are treated by the justice system, whatever that constitutional framework is. We all, as citizens, enjoy common rights, and that's a very fundamental problem. The disputes resolution, the tribunal process and the reverse-onus processes you're sliding forward in many of the bills you've got—it's the provision where I say you're in violation of an act and you, as the person who owns the property or the paper, is then responsible to prove you're not. That's reverse onus.

I think the purpose here, as we've said all along—and Ms. Scott has said it repeatedly, if you want to dig out Hansard—is this: We agree, as Mr. Tabuns would as

well, that the goal here, shared by all parties, is having safe, clean drinking water. What is wrong here is the process itself. We're bogged down in the very early sections of this bill on the process, whether it's recognizing aboriginal rights or just individual rights. We had the minister—it was highly exceptional—come this morning and say they are going to deal with some of the expropriation or land acquisition issues, as well as taking some time in the transition to get the education process in place and set up some of the infrastructure. We're in favour of many of those things. In fact, we're supporting them and voted for them.

When you get into these highly technical issues, some of us quite clearly aren't qualified; I can't speak for others. Maybe we should be doing more than taking a five-minute recess on this issue. We should be putting this thing back on the burner, table it, go back and have us all properly briefed on how to get this right. I can tell you, on behalf of Mr. Tory and the PC caucus, we want to have safe, clean drinking water while not expropriating the rights of people.

The Chair: Thank you, Mr. O'Toole. I take it from your words that you're asking for unanimous consent to adjourn the committee and return the bill to the House. Do I have unanimous consent? I do not. Mr. Tabuns?

1140

Mr. Tabuns: I want to note a few things, Mr. Chair, and I want to address some of the comments made by the parliamentary assistant.

Under the parks act, First Nations were concerned about park management plans and other priorities. They're concerned about source water protection plans and how they will impact their aboriginal and treaty rights. They don't feel they have been consulted properly, and that's something that you, Parliamentary Assistant, heard in the course of the hearings that were held here. They make that argument. You said earlier that we haven't heard from them. Well, the Chiefs of Ontario and another body that came before us testified that they wanted a non-derogation clause. Your government has previously proposed a non-derogation in the parks bill. You adopted a bill that has a non-derogation clause that's absolutely the same as the one we put forward. I don't understand why you are pulling back at this point. I've heard the arguments that you've made. I've worked them through. I still don't understand why you're pulling back at this point.

These changes, these acts that come forward that potentially bring us into conflict with First Nations, require that we treat them with respect, as other governments with rights and concerns. They see an act that is written in very broad framework strokes. We know from the amendments you've put forward and the text of the act that large chunks of what's actually going to happen will come out of the regulations. They want to make sure that when those regulations are written, the room for argument as to whether or not their rights are going to be respected is minimized to the greatest extent possible. I think it's incumbent upon you, just as you did with the parks act, to include a non-derogation clause.

I will go back to one question that was asked by you: Why did we put it in 2 rather than 1? Frankly, I'm not a lawyer. I go to the people who draft these things. They suggest a location that legally makes sense; I take their advice. Maybe they were wrong. Maybe it should have been in 1. Again, I'm not a lawyer; I took the best advice I could get at the time.

The Chair: Thank you, Mr. Tabuns. Any further comments?

Mr. Wilkinson: I appreciate the comments from the member for Toronto–Danforth. The question I asked in regard to the submissions that we had, both written and oral, from First Nations had to do with the issue that I think was relevant in regard to the parks bill, which is, other than a general statement that this act will be constitutional, which is a given in this province—all acts must be constitutional. So my question was, because I remember reading the briefs, what was the fundamental issue where there was a concern that this was necessary?

It's the position of the government that the amendments we have already filed and that everyone sees regarding First Nations is the most effective way for us to address the specific concerns that they raised, as opposed to putting this issue in either section 1 or section 2. It's not that we did not listen and take action, given the suggestions and the recommendations made by our fellow citizens who are First Nations. We have addressed or we plan to address them in the package that's filed with all three parties. We think that is the appropriate way to bring clarity to the issues they raise, and not for this bill to enter into an area of constitutional law, where it is our position and I would assume the position of each and every government that ever has or will come through this place that the Constitution Act is supreme in this country. As our legal counsel for the ministry said, we don't have to tell people we're acting under section 92 of the British North America Act either.

We'll be voting for our amendments and ask for all-party support, given the level of concern for the amendments we are proposing in regard to First Nations in this bill, given the feedback that we got quite eloquently from them.

Mr. Tabuns: Mr. Chair, I believe the arguments have been well made by the First Nations, and the Chiefs of Ontario state here: "It's been our experience that despite numerous court cases stating that the governments must negotiate with First Nations, the Ontario government reputedly"—they use the word "reputedly," but I would guess it's a typo and should be "repeatedly"—"refuses to do so. This often leads to expensive court cases, ultimately deteriorating government-to-government relationships."

There has been a history of bad relationships. I don't think anyone in this room can deny that. They want to act to ensure that the greatest possible protection exists for their rights. I have to say, governments have been taken to court before on not respecting the Constitution. To the extent that First Nations have greater protection in this act, there will be greater respect on their part for the act itself.

I think we've made all our arguments. They're all on record. I don't think a lot of minds are going to be changed at this point, but I think you're making a mistake, frankly.

The Chair: Thank you, Mr. Tabuns. I'll take that as the will of the committee to proceed to the vote at this time.

Mr. O'Toole: Recorded vote.

Mr. Tabuns: Recorded, please.

The Chair: Shall section 1.5, referent to PC motion 4.1, carry?

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: I declare that section to have been defeated.

We'll now move to section 2, with the presentation of government motion 5, subsection 2(1).

Mr. Wilkinson: I move that the definition of "commercial motor vehicle" in subsection 2(1) of the bill be struck out.

In explanation, this motion is made to remove the definition of "commercial motor vehicle" from the bill. The term "commercial motor vehicle" is used in section 91 of the bill. It is the intention of the government to vote to remove section 91, which relates to offences committed using vehicles, from the bill because it is not anticipated to be relevant for the operation of the bill. Therefore, it would not be necessary to define "commercial motor vehicle" in the bill. So that's why we've moved this motion.

Mr. Tabuns: I don't want to belabour this, but can you tell us what your original thinking was, having reference to commercial motor vehicles in the act in the first place, and what has caused you to change your analysis?

Mr. Wilkinson: I knew you'd ask me that question.

Mr. Tabuns: You're right.

Mr. Wilkinson: It may not take me five minutes to flip to section 91. I say to my friend, I guess it goes to the question of doing these things in order. I can say that in regard to section 91, it provides for the service of offence notices or summonses on the operators of commercial motor vehicles and deems that to be, in most instances, service upon the owner or lessee of the vehicle and on the operator's employer.

Now, 91(1) states that the procedure for the serving of an offence notice or summons to the operator of a commercial motor vehicle in respect of an offence under Bill 43—subsection 91(2) states that the delivery of an offence notice or summons to the operator of a motor vehicle may also be deemed to be served to the employer of the operator.

Subsection (3) indicates that subsection (1) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner. The burden of proof will remain on the owner.

Subsection (4) stipulates that the holder of a permit under part II of the Highway Traffic Act shall be deemed to be the owner of the vehicle for the purposes of section 91, providing that the plate of the vehicle corresponds to the plate listed in the permit.

Subsection 91(5) provides for the non-application of subsection (4). If the number plate was displayed on the vehicle without the consent of the holder of the permit, the burden of proof will remain with the holder of the permit.

It is the intention of the government to remove that section which relates to offences committed using vehicles from the bill because we can see no instance where it will actually have effect. Obviously, someone thought it should be in there. I think on sober second thought it was decided that there would be no practical application of that part of the bill, and so it should be struck.

The Chair: Mr. Tabuns.

Mr. Tabuns: Okay. I have to say first, I grew up in Hamilton.

Interjection.

Mr. Tabuns: That explains it all; yes, I know. Many have said that, including my caucus colleagues.

In any event, one of the things that shaped modern environmental thinking in Ontario was a series of interesting events, unfortunate events, that occurred around dumping of toxic waste in this province in the 1970s and 1980s. In Hamilton harbour at one point there was something called the magic box. It was at the end of a pier in Hamilton harbour, and trucks could back down this pier, the top of the magic box would be opened, they would dump the contents of their truck into the magic box, the lid would be put down and the box, which extended down below the waterline, would dispose of all the waste that had been therein dumped.

1150

So I have some memory that commercial vehicles can be used in the process of damaging water supplies. On the basis of a primordial memory of the magic box, I'm going to oppose this change because I think you can use commercial vehicles to damage water sources.

The Chair: Thank you, Mr. Tabuns. If there are no further questions or comments, we'll proceed to the vote on government motion 5.

Mr. Tabuns: Recorded vote.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

Tabuns.

The Chair: I declare government motion 5 to have carried.

We'll now move to the presentation of NDP motion 6.

Mr. Tabuns: Mr. Chair, this amendment changes the definition of "drinking water threat" to include activity in an airshed. I want to note that activities in airsheds can have impact on water quality.

Mr. Wilkinson: Just a point of order now: You actually have to read the motion in first before we debate it, so we have it on Hansard.

Mr. Tabuns: Oh, I'm sorry. Thank you very much. You know, if you don't do this every day, you forget.

I move that the definition of "drinking water threat" in subsection 2(1) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"drinking water threat" means an existing activity, possible future activity or existing condition that results from a past activity, including an activity or condition in an airshed."

I think there is direct interaction between air and watersheds, that the operation of a toxic plant or factory that emits toxic fumes, particles, dust or lead into the air has the potential to contaminate a watershed and thus, when we talk about protection of water, we have to talk about protection of the airshed.

My riding, Toronto-Danforth, includes an area of south Riverdale that was subjected to extraordinarily heavy lead contamination earlier on in the last 50 years. When you have a lead-smelting plant, the lead doesn't travel that far and you can well have a condition where you have contamination in surface water from deposition from the air. So I think it's to our advantage to be comprehensive in this act and include this particular amendment.

The Chair: Thank you, Mr. Tabuns. Are there any further questions or comments? Seeing none, we'll proceed to the consideration of NDP motion 6.

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated. We proceed now to the consideration of government motion 7.

Mr. Wilkinson: I move that the definition of "drinking water threat" in subsection 2(1) of the bill be struck out and the following substituted:

"drinking water threat" means an activity or condition that adversely affects or has the potential to adversely affect the quality or quantity of any water that is or may be used as a source of drinking water, and includes an activity or condition that is prescribed by the regulations as a drinking water threat; ('menace pour l'eau potable')."

This motion would amend the definition of "drinking water threat" to mean activities and conditions that adversely affect or have the potential to adversely affect

the quality or quantity of any water that may be used as a drinking water source. As well, a drinking water threat could include an activity or a condition that is prescribed as a drinking water threat. The references to existing activities and possible future activity or existing condition that results from a past activity would be removed. Where it's necessary to distinguish activities that exist before a source protection plan comes into effect from activities that come into effect after the source protection plan comes into effect, the distinction would be made within the relevant provisions of the bill.

The Chair: Thank you. Mr. Tabuns.

Mr. Tabuns: I think it weakens protection and thus should be voted against, and I'd ask for a recorded vote when it comes to a vote.

Mr. Wilkinson: We had numerous delegations from both municipalities and industrial stakeholders about concerns that this bill would set raw water standards, which are best dealt with in other pieces of legislation. This bill is very focused on drinking water.

Ms. Scott: I just wanted to point out that we have an amendment to change the definition of "significant drinking water threat" coming up later, so we'll address it at that point.

The Chair: Thank you. We'll proceed to the vote: a recorded vote.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Scott, Tabuns.

The Chair: Carried.

Government motion 8.

Mr. Wilkinson: I move that the definitions of "groundwater recharge area," "motor vehicle," "permit inspector" and "permit official" in subsection 2(1) of the bill be struck out.

The Chair: Thank you. Mr. Tabuns?

Mr. Tabuns: I disagree with the direction the government is taking on this bill in eliminating "permit inspector" and "permit official." I would say that the bill as originally written, with all its failings, at least included permitting, which would be a higher standard than negotiation of risk management. There is case law that exists that gives us a better understanding of what we're going to have and not have. I would say, in fact, the original bill allowed authorities, where they needed to or where they felt it was justified, to negotiate risk management plans, but it also gave them the permit tool to protect public health and the state of the environment. This change, the deletion of "permit inspector" and "permit official," flows through the bill, changes the meaning of the bill, and I believe, for the protection of water and public health, should be opposed.

Mr. Wilkinson: Since this will be a theme that will go throughout the bill, I think we heard repeatedly when we were in committee that this bill requires, I guess you would say, the buy-in of the public and people affected to ensure it is implemented. It is not something that will ever be accomplished by government fiat first. We believe, given the feedback that we had from people, that we need to enshrine in the bill the idea that we are actually going to negotiate with people first, based on science, informed by science; that, by and large, the vast majority of landowners, particularly farm groups, are the best, and always have been the very best, stewards of the land and the water that flows over or under their land; and that we should start the process wherein the government interacts with landowners on the basis of having the carrot first and approach landowners to work collectively to protect the common drinking water.

This does not change any of the other bills that have to do with what is uncovered if there is a significant threat to drinking water. There are already numerous pieces of legislation that deal with very serious issues, but this has to do with how we are going to implement this. We all agree on the purpose of the bill. The question is, how do we implement it? I think we heard loudly and clearly that if we want the intent of this bill to actually be implemented, this is the better approach and we will end up with a better result for the good people of Ontario.

The Chair: Any further questions or comments? Mr. Leal.

Mr. Leal: When it comes to a vote, I'm going to get a recorded vote on this.

The Chair: Fine. Mr. Tabuns?

Mr. Tabuns: I think you do have to have buy-in, which is why I think you need to have funds allocated. So this is a useful step, that there's a stewardship fund. I think you have to have funds allocated so municipalities and conservation authorities can monitor and enforce with some assurance that they can do it with adequate resourcing.

I would say that many of the people who spoke to us know very well that if their water supply is contaminated to the point that it can't be used, for instance, for feeding their livestock, their business is over. I believe we consistently do face significant challenges to the state of our water. You must believe it as well, because you've brought forward this legislation. There is a question of what will be most effective in protecting water that is worth almost an unpriceable value to this society, because if we don't have that water, we can't function economically.

1200

I think you're making a mistake in retreating on this. I think you should stick with very strong protection. I think you should develop that public support through investment in education, investment in incentives, and, as we were told in Cornwall, in many ways acting like the pipeline companies that came through and said, "We need this change. We'll negotiate with you," but not abandoning on our part the tool and the power to take

action in a clear, necessary way where we have case law backing us up.

I've made my argument.

Ms. Scott: Just two comments, and I know we're going to deal with this further in government motions. The permit inspector is going to change. Will there be a definition coming? It's moving to—is it risk management inspector?

Mr. Wilkinson: I can say on behalf of the government that there is a series of amendments that change permit officials to risk management, but I think what you'll find—and this maybe goes to the member for Toronto-Danforth's point—is that we will be providing clarity by saying that the negotiation is the first order of the day, as opposed to the last order. I think we heard very, very consistently that the idea of having people show up with the stick first is not the way to get the desired behaviour that we want—by not recognizing, to start, that landowners are, by and large, the best stewards of their land and their water.

I just want to take some exception to what the member for Toronto-Danforth said. We're not removing the stick. The stick is still there. It's just that it's not the first order of the day; it is the last thing that is contemplated. He may have an opinion that says it should be the first thing used. After listening to people, we've decided that, by law, it shouldn't be the first thing; we should attempt first to negotiate with the landowner. I think that's where the stewardship fund, as you said, actually shows the good faith of the government, in our opinion.

Mr. Tabuns: Just for clarity on the record, I don't think permitting needs to be your first step, but you have to have it in your armoury.

Mr. Wilkinson: And it is here. We're not removing it, sir. We're not removing the fact that there can be orders placed on property at the end of the process which would be contemplated by the bill. The question is, where, in implementation, should that tool be? Should it be at the front of the toolbox or the back of the toolbox? What we're saying here is that, one, we need to recognize that the first order of business is managing risk and the second thing is that negotiation with landowners who are affected is the first order of business. But in the rare case where we have a landowner who through all of this process says, "I still do not feel that I have any responsibility for the common good," there can be an order placed on the property. It still doesn't preclude the fact that perhaps, because of financial hardship, there can be the provincial government playing an appropriate role to make sure that that is implemented because that is in the common good. The question is the approach that we take. But we're not getting rid of the ultimate tool of government to make sure that this bill is enforced.

Mr. Tabuns: We disagree.

Mr. O'Toole: Very briefly, this is a very technical bill. There are a couple of things. The groundwater recharge area is sort of being struck out. In the first instance, it was going to be defined in regulation. The question in that respect is, where do we get this ground-

water recharge area straightened out—if not in regulations, somewhere else?

The other thing: If you look at "permit inspector" and "permit official" being dropped, there must be other amendments coming along, because if you look in part IV, all of that section completely, from 42 onwards right down to 43, includes the same language.

It again goes back to the generality—I want a response—of the drafting here. The changes are just unbelievable. Take the time and get it right. I'm serious. Take a look at it. You must be embarrassed. The number of amendments here are outrageous. There are more amendments than what's in the original bill.

Interjections.

Mr. O'Toole: I'm sorry. It's troubling for me to see something so hastily done on such an important topic.

The Chair: Seeking the will of the committee, shall we proceed with the vote before lunch or after lunch?

Mr. Wilkinson: Just to clarify the record, I can say to my friend from Durham that there's a subsequent motion, being that we are dropping the definition of "groundwater recharge area" and replacing it with "significant groundwater recharge area." We've been told repeatedly that we need to provide some clarity in regard to the issue of "significant," so we will deal with that. We are dropping "motor vehicle," and we've already had a discussion about section 91. And we are renaming permit inspectors to risk management officials and then bringing meat to that by mandating that there will be negotiation as the first step, not the last step. You can't negotiate after you've already put an order on. We should attempt first to negotiate with the landowner, although we still have the ability to put an order on a property.

The Chair: Thank you. Are the members ready to proceed to the vote? Taking that as a yes, a recorded vote on government motion 8.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Scott, Tabuns.

The Chair: Carried.

The committee is recessed until 1 p.m.

The committee recessed from 1206 to 1301.

The Chair: Members of the committee, I call the committee back into session. I also respectfully remind all committee members that we have something in the order of about 218 amendments still pending. As I understand it, it has been agreed to by all parties to complete them by the midnight hour tomorrow. In any case, we'll now proceed to the presentation of government motion 9, for which I call upon, very respectfully, Mr. Wilkinson.

Mr. Wilkinson: Thank you, Mr. Chair. It's amazing how lunch puts everyone in a good mood.

I move that the definition of “regulations” in subsection 2(1) of the bill be amended by striking out “under this act” at the end and substituting “under sections 99 and 100.”

That amendment is technical for clarity.

The Chair: Any further questions or comments? Shall we proceed to the vote?

All those in favour of government motion 9? All opposed? Carried.

We'll now proceed to consideration of PC motion 9.1, which has been lately added, secondary package. Ms. Scott.

Ms. Scott: I move that subsection 2(1) of the bill be amended by adding the following definition:

“‘surface rights property’ means lands where the surface rights are held separately from the mineral rights;”

That's just a clarification in the definitions.

The Chair: Any further questions, comments? Seeing none, we'll proceed to the vote. Yes, Mr. Tabuns?

Mr. Tabuns: If you could just explain—because this is a late one—where you intend to go with this amendment.

Ms. Scott: It's just to provide more clarity to those impacted by the subsection in respect to some of the industries that we're concerned about, that the surface rights—and there's already MOE legislation dealing with that. So it's more of just a clarifying note.

Mr. Wilkinson: We'll be voting against the motion because we believe that the bill, as drafted, actually by giving primacy to the Clean Water Act, makes the necessity for this clarification redundant.

The Chair: We'll proceed with the vote. Those in favour of PC motion 9.1? Those opposed? Defeated.

We'll now proceed to consideration of PC motion 10.

Ms. Scott: I move that the definition of “significant drinking water threat” in section 2 of the bill be struck out and the following substituted:

“‘significant drinking water threat’ means a drinking water threat that, according to a risk assessment using scientifically rigorous methodology with quantifiable results, clearly poses or has the potential to pose a significant risk that is clearly distinguishable from a drinking water threat that does not pose or have the potential to pose a significant risk;”

The Chair: Any further comments? Seeing none, we'll proceed to the vote. Those in favour of PC motion 10? Those opposed? Defeated.

NDP motion 11: Mr. Tabuns.

Mr. Tabuns: I move that the definition of “significant drinking water threat” in subsection 2(1) of the bill be struck out.

I believe that simply referring to regulations is not enough for us to make a decision on, and, frankly, if something's a drinking water threat, it's a drinking water threat. I have further amendments in this package to address that.

The Chair: Any further questions or comments? Seeing none, we'll proceed to the vote.

Mr. Tabuns: Recorded vote.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 12.

Mr. Wilkinson: I move that clause (a) of the definition of “vulnerable area” in subsection 2(1) of the bill be struck out and the following substituted:

“(a) a significant groundwater recharge area,”

That is consistent with the previous debate that we had about the need to define a significant groundwater recharge area.

The Chair: Any comments? We'll proceed to the vote.

Interjection: Recorded vote.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Tabuns.

The Chair: Carried.

PC motion 13.

Ms. Scott: I move that section 2 of the bill be amended by adding the following definitions:

“‘adverse effect’ means impairment of the quality or quantity of a municipal drinking water source;

“‘exposure’ means the probability that a contaminant introduced into a water supply will actually be drawn into a municipal drinking water supply;

“‘hazard’ means the probability that a threat will actually be introduced into a municipal drinking water supply, with a low hazard indicating that management practices have mitigated the inherent threat and high hazard indicating that such management practices are absent;

“‘pathway’ means the route by which a contaminant may reach a municipal drinking water source, allowing the contaminant to move quickly to the drinking water source thereby increasing the risk;

“‘risk’ means the probability that a pathway exists for a threat to be delivered to a drinking water source and the probability that a threat will be delivered to a municipal drinking water source;

“‘threat’ means a chemical, chemical compound or pathogen associated with a land use activity capable of contaminating a present or future water source to the extent that it would provide degraded water should the water be used as a municipal drinking water source but which can be managed to reduce the associated hazard;”

This was brought up again through committee, concerns—a lot from the agriculture groups—about the need for definitions; the term “adverse effect” needs to be defined and amended as such.

The Chair: Any comments? We’ll proceed to the vote. All those in favour of PC motion 13? All opposed? Lost.

We’ll now move to government motion 14.

Mr. Wilkinson: I move that subsection 2(1) of the bill be amended by adding the following definition:

“‘designated Great Lakes policy’ means a policy designated in a source protection plan as a designated Great Lakes policy; (‘politique des Grands Lacs désignée’).”

This is the first time we’re dealing with issues in regard to the Great Lakes. This motion would add a definition of “designated Great Lakes policy” to the bill to accompany our proposed amendment that I’ll be making to section 19, which would allow policies in a source protection plan to be designated “Great Lakes policies” to which planning decisions and prescribed instruments must conform. Such designation would be subject to the approval of the minister when he or she approves a source protection plan. It particularly addresses non-governmental environmental organization stakeholder requests that Great Lakes requirements be clarified and strengthened. I think we heard that consistently. I know that we heard particularly from the Great Lakes and St. Lawrence Cities Initiative, Friends of the Rouge Watershed, the Canadian Federation of University Women and Friends of the Tay Watershed. I believe that this bill provides the clarity they’re seeking.

1310

The Chair: Thank you. Any further questions?

Mr. O’Toole: I had the privilege this summer of attending a Great Lakes legislative conference in Chicago; all parties were represented there. The Great Lakes agreement on water-taking and other issues around both quality and adverse taking of water was widely discussed. So I hope that the mover of this is aware that there are precedents here in terms of agreements both federally and provincially, and with states, on who has jurisdiction to legislate things with respect to those waterways.

Mr. Wilkinson: I thank the member for Durham for his comments. I can assure you that, after the delegations, though the Great Lakes—in many instances, those agreements that we enter into with our cousins from the south—is a federal matter, the question of the water coming from Ontario going into the Great Lakes is something that this bill has to concern itself with, which is why we’ve put in the amendment.

I asked one of our deputants whether or not they felt that this was happening in any other states or provinces affected by the Great Lakes. He said no, that, if I remember correctly, our proposed bill would set the gold standard. I believe our amendments now make this a platinum standard, and we would hope that our neighbours in our watershed would adopt this type of pro-

tection for the Great Lakes and get this right up to the top of the watershed before this water ever gets into our Great Lakes.

The Chair: Thank you. Any further questions or comments? Seeing none, we’ll proceed to the vote. All those in favour of government motion 14? All those opposed? Carried.

We now proceed to NDP motion 15. Mr. Tabuns.

Mr. Tabuns: I move that subsection 2(1) of the bill be amended by adding the following definition:

“‘precautionary principle’ means the principle that, where there is a threat of serious or irreversible damage to an existing or future source of drinking water, lack of full scientific certainty should not be used as a reason for postponing measures to prevent the threat;”

As those of us who sat through the hearings know, we had very strong representation from environmental groups, health groups, and even cottagers calling for inclusion of the precautionary principle explicitly in this act. I believe, as do many others, that a precautionary approach should be the first principle of all environmental legislation, particularly that dealing with water.

We know that inclusion of the precautionary principle has been recognized in other acts in Canada, including the Canadian Environmental Protection Act, the Oceans Act and the Endangered Species Act. Even the minister, when she talked about this bill in the opening session, talked about the fact that this act was inherently precautionary. So I can’t see that adoption of this language would in any way violate the act’s direction.

I note that the Supreme Court of Canada, when it was dealing with the case of *Spraytech v. the town of Hudson*, cited the Bergen Ministerial Declaration on Sustainable Development, 1990, saying: “In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.”

The Supreme Court went on to say that scholars have documented the precautionary principle’s inclusion “in virtually every recently adopted treaty and policy document related to the protection and preservation of the environment.”

When environmental groups were before us, when health groups were before us, they called for inclusion of the precautionary principle in this act. Frankly, failure to act on a precautionary basis can have substantial consequences. I cite lack of action on the part of the world when it comes to climate change. I would say that the reason Justice O’Connor spoke about the need for a precautionary approach in his recommendations—and it is true, he did not use the words “precautionary principle,” but “precautionary approach”—reflects the fact that, at times, a failure to act in a precautionary way can have substantial, irreversible consequences.

It makes sense that those who will be actually carrying out this act should know from the very beginning that

their instructions are to act in a precautionary way when they are assessing threats and taking action to prevent those threats from causing damage to our population. That's the basis for moving this motion.

The Chair: Thank you, Mr. Tabuns. Are there any further comments?

Mr. Wilkinson: Since this is the first time we're actually going to deal with this issue, I thought it would be appropriate—I want to thank the member for making the motion. We have a difference of opinion on this in the sense that I do agree with the minister that the bill is inherently precautionary. I think it does fulfill the intention of Justice O'Connor, who had a very lengthy review of this whole issue. I can assure you that the precautionary aspect or methodology is what is going to inform the regulations and rules that will be applied by our minister, and I believe subsequent ministers, to this act. But I do note, from a question of balance, that we had many, many deputations as well on the other side about what they fear would be the unintended consequences, or perhaps intended consequences, of not having, as a basis, science informing the bill, as opposed to informed speculation. So we believe the bill is inherently precautionary and we will endeavour to ensure that our rules and regulations themselves are precautionary in the spirit of O'Connor, who looked at this matter in quite some detail.

Mr. Tabuns: I think there's a really substantial issue here, because I heard this a lot from MPPs during the presentations, this suggestion that incorporation of the precautionary principle was an abandonment of science. I have to ask those who put that on what basis the precautionary principle should not be considered scientific or prudent. When humanity deals with complex, difficult problems, the full course of which is not always evident, it has very frequently been to its disadvantage to ignore the precautionary approach. When governments and when United Nations bodies incorporate the precautionary principle into the text of agreements and acts, it's not an abandonment of science; in fact, by the scientific and health communities and environmental communities, that's seen as a recognition of science, its strengths and its limitations. So you can make a variety of arguments about this, but to say that the precautionary principle is outside of scientific knowledge or outside of scientific practice is simply wrong. I'd have to ask anyone who makes that argument, "Okay. So tell me why acting in a precautionary way is not scientific. Tell me why environmental groups, UN bodies and nation-states incorporate the precautionary principle into their legislation and agreements if they have not based it on science."

Mr. Wilkinson: And I would say that you'd be absolutely right if the bill itself was not precautionary. Then you'd make the argument that we have to put it in the bill because the bill itself is not precautionary. But it is precautionary. Everything that we learned from O'Connor is precautionary, and this is one thing.

My concern is that it's very important—we can have all the laws in the world. The question is, how do we

implement this bill? We've gone beyond the needing to do it to, "How do we implement it?" I think we heard quite eloquently from many, many groups about what is required on the ground to make sure this bill is implemented. So we have a difference of opinion as to how one does that. You would like it enshrined in the act, and we feel that the act itself is precautionary and that everything we will do in regard to the rules and regulations will be precautionary.

Again, we have a difference of opinion, but I look ahead to what I'm hearing from people about what we need to do to get the action implemented. I took great note of those people who felt that the implementation of this bill would fall if we were to do what you're suggesting. That would cause tremendous problems with getting the kind of buy-in we need from people to take the actions required.

1320

The Chair: Thank you. If there are no further questions or comments on this particular motion—

Mr. Tabuns: Recorded.

The Chair: —we'll proceed to the recorded vote for NDP motion 15.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We will proceed now to government motion 16.

Mr. Wilkinson: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'public body' means,

"(a) a municipality, local board or conservation authority,

"(b) a ministry, board, commission, agency or official of the government of Ontario, or

"(c) a body prescribed by the regulations or an official of a body prescribed by the regulations; ('organisme public')"

This motion would add a definition of "public body" similar to that found in the Municipal Act, 2001, so it is to ensure that there is clarity between two pieces of provincial legislation.

The Chair: Any comments? Seeing none, we will proceed to the vote. Those in favour of government motion 16? Those opposed? Carried.

Government motion 17.

Mr. Wilkinson: I move that subsection 2(1) of the bill be amended by adding the following definitions:

"'risk management inspector' means a risk management inspector appointed under part IV; ('inspecteur en gestion des risques')"

“‘risk management official’ means the risk management official appointed under part IV; (‘responsable de la gestion des risques’).”

Again, we’ve already had a debate about risk management officials versus permit officials, and this is just one more part of the act where that has to be done so that there is consistency, based on our previous vote.

The Chair: Thank you. Any further comments?

Mr. Leal: A recorded vote, please.

Ayes

Flynn, Leal, O’Toole, Ramal, Scott, Wilkinson, Wynne.

Nays

Tabuns.

The Chair: Carried.

Government motion 18.

Mr. Wilkinson: I move that subsection 2(1) of the bill be amended by adding the following definitions:

“‘significant groundwater recharge area’ has the meaning prescribed by the regulations; (‘zone importante d’alimentation d’une nappe souterraine’)

“‘significant threat policy’ means,

“(a) a policy set out in a source protection plan that, for an area identified in the assessment report as an area where an activity is or would be a significant drinking water threat, is intended to achieve an objective referred to in paragraph 2 of subsection 19(2), or

“(b) a policy set out in a source protection plan that, for an area identified in the assessment report as an area where a condition that results from a past activity is a significant drinking water threat, is intended to achieve the objective of ensuring that the condition ceases to be a significant drinking water threat; (‘politique sur les menaces importantes’).”

This motion would add definitions of “significant groundwater recharge area” and “significant threat policy” to the bill. You will recall that we just removed “groundwater recharge area,” and this is a substitution so that we bring clarity to this issue.

Mr. Tabuns: There are two issues here, Mr. Chair, that I think are highly problematic.

The first is the pig-in-a-poke issue. We’re being asked to vote on a definition which is simply a title with reference to regulations. I think it’s fundamentally wrong that you ask us to vote on a definition without the definition being before us, something that’s going to be dealt with in the regulations. So I don’t think any opposition member—and, frankly, the government members who are not going to be part of writing regulations—should vote for it. You are being asked to give a blank cheque. Now, some have more confidence in the cheque-signer than I do, but still, you really are not being asked to make a decision; you’re being asked to simply pass on authority.

The second part of this is the simple reality that saying that the threat will only be dealt with if it’s significant raises huge questions about where that line is going to be. If we have a toxic waste dump over fractured limestone, and through that limestone flows the water supply to a First Nations reserve, is that a significant threat? Is it significant if it’s a very small reserve? Is it significant only if it’s a big reserve? If you have a situation where a sewage lagoon is near a creek but that creek only serves one or two people much farther down the line, is that significant?

I think that your wording here—first of all, I think your non-provision of a definition that we can understand, that we can read, debate, and decide on as to whether or not it’s acceptable is fundamentally the wrong way to approach writing laws. Secondly, I think your approach to “significant” is problematic. We have an Environmental Protection Act that says that putting deleterious substances in water is wrong. It doesn’t talk about size of the deleterious substance, scope, etc; it just says it’s wrong. You know I’ve had an interesting discussion about pollution in Ontario and how you can get around it, somewhat like in the Middle Ages, when you could buy absolution by paying penance money. But that being said, this should not be supported by this committee. We should not have definitions before us that aren’t defined.

Mr. O’Toole: Just briefly to be on the record, Ms. Scott and I have roughly the same idea of this provision allowing the regulations to do the defining as somewhat a moot question, because we really don’t know what the regulations will say. The point has been made quite well by Mr. Tabuns. I’d say that even if you look at the “significant threat” policies, it’s another example where we’re voting on something where we don’t really know, at the end of the day, what the regulation states, as well as what the significant threat might be—past, present or future. It goes back to the argument that Mr. Tabuns was making in his previous argument with respect to the policy in the broadest sense of avoiding precautionary principle issues. I just wonder how genuine the province is—or the government, for that matter—when they voted down the precautionary principle.

Do you follow what I’m saying here? If you really meant that, you would have made sure that that principle was not just in principle stated overall by the bill, but by the actions that we’re discussing here, and not really knowing what those regulations will say.

I look at Bill 102—which was a bill that was passed after a lengthy set of amendments—on prescription medication. The druggists were here, upset like heck. You finally acquiesced during the final clause-by-clause on that bill, Bill 102. Now I’m finding out from all the pharmacists that you’ve just gone about—the regulations now are doing what you didn’t do in legislation. It’s quite draconian—tragic, actually, in a democratic sense.

So I can’t be supporting this. I feel badly about that. Again, we want to restate: Get this right. It’s just too important. The way you’re approaching this—now I’m

having to go to section 19 to get some grasp on what this amendment actually does. But even there, reading that, I don't know, because it's in the regulations that you're going to define these threats. So you've got us chasing something here.

I challenge some of the members on the other side—I see the puzzled looks on their faces. Now they're starting to realize that they're in this and they can't get out.

The Chair: Mr. Wilkinson.

Mr. Wilkinson: I'm sure that some of my agricultural stakeholders will be very interested to read the transcript of what the member from Durham just said about the precautionary principle. I'm sure to make sure I add that to my Christmas card to all of them and quote you on that. They'll find that quite fascinating. I think maybe my friend from Peterborough may be doing that.

It goes to the issue—

Interjections.

Mr. Wilkinson: I hear the members opposite. If one assumed, incorrectly, that somehow a minister could write regulations and that somehow they would be written in secret and they would be promulgated in this province, it would belie the fact that all of these issues that need to be resolved through regulation will all be posted through the Environmental Bill of Rights website. This will be a very transparent process. We are in the process now of setting up a framework piece of legislation which then can live and breathe through regulation so that this can be a responsible government instrument to get the policy objective.

I would agree with the point if somehow the implementation of this was going to be in secret. This will all be done in the light of day. So I think that, given the complexity of it and given the fact that we are in uncharted territory, the best way to deal with this issue is through regulation and through what is a very transparent process in the province of Ontario, given our environmental laws.

The Chair: Are there any further questions or comments? Seeing none, we'll proceed to the vote on government motion 18.

Mr. Tabuns: Recorded vote.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Scott, Tabuns.

The Chair: Carried.

NDP motion 19.

Mr. Tabuns: Mr. Chair, before we go there, the package I have of my own prepared motions includes a motion that the definition of "significant drinking water threat" be struck out, and it isn't in this package that's been given to us. So I don't know at what point it left the radar screen, but I would like to have that considered.

1330

The Chair: You might advise the clerk specifically, Mr. Tabuns.

Mr. Tabuns: My apologies. It appears I made a mistake there.

The Chair: Mr. Tabuns, I'm advised that we voted on that NDP motion 11; it was defeated.

If we could proceed now with NDP motion 19.

Mr. Tabuns: The lunch break clearly causes problems. Thank you.

I move that section 2 of the bill be amended by adding the following subsection:

"Adverse affect

"(1.1) For the purpose of this act,

"(a) an activity or condition adversely affects the quality or quantity of any water that is or may be used as a source of drinking water if it contributes to,

"(i) harm or discomfort to any person,

"(ii) an adverse effect on the health of any person,

"(iii) impairment of the safety of any person,

"(iv) loss of enjoyment of drinking water, or

"(v) degradation in the appearance, taste or odour of the water; and

"(b) adverse affects shall be measured from existing or potential water supplies that are used for human consumption and shall be deemed to be a danger to the health or safety of persons, notwithstanding that the water quality may be improved through treatment."

I am trying to deal with the lack of definitions in this act by bringing forward a definition that I think is straightforward, clear and, frankly, is derived from the Environmental Protection Act definition of "adverse effect." My hope is that at least in part there will be some clarity in this bill and that lawmakers will actually get a chance to vote for or against the language in the bill, as opposed to a situation where lawmakers get to read about the final definition of the bill on a website and are able to send out an e-mail but not vote yea or nay on whether that change reflects their actual intent. I would hope the government would support this amendment so that there will be greater clarity in this act.

The Chair: Are there any further questions or comments?

Mr. Wilkinson: Similar to our previous debate, we believe that the people need to be consulted, and the way to do that is through the existing mechanism we have in this province for the development of regulations in a transparent way.

The Chair: We'll proceed to the vote on NDP motion 19.

Mr. Tabuns: Recorded.

The Chair: A recorded vote.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We'll proceed now to the consideration of that section, as amended. Shall section 2, as amended, carry?

Interjection: Recorded vote.

The Chair: A recorded vote.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Scott, Tabuns.

The Chair: Carried.

We now proceed to NDP motion 20: 2.1, a new section.

Mr. Tabuns: We had this debate before lunch. The wording is somewhat different from that proposed by the Conservatives but largely addresses that whole question of abrogation or derogation. My hope is that over lunch the parliamentary assistant and his colleagues have had a chance to further consult and have come to the conclusion that they can correct their error made before lunch and vote in favour of this amendment.

Mr. Wilkinson: I'd like to go on record that, after consultation, we are even more convinced of the wisdom of voting against this and dealing with First Nations issues in the government package that will be forthcoming.

The Chair: Mr. Tabuns, if you might read the amendment as well.

Mr. Tabuns: Oh, sorry. My apologies.

I move that the bill be amended by adding the following section:

"Existing aboriginal or treaty rights

"2.1 Nothing in this act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982."

The Chair: Thank you. If there are no further comments, we'll proceed to the consideration vote.

Mr. Tabuns: Recorded.

The Chair: Shall section 2.1, NDP motion 20, carry? Recorded vote.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We now consider NDP motion 21, which is 2.2, new section.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"Consultation with aboriginal peoples

"2.2(1) The crown in right of Ontario shall not delegate its duty to consult with aboriginal peoples in connection with matters related to this act.

"Funding

"(2) The crown in right of Ontario shall ensure that aboriginal peoples are provided with sufficient funding to permit them to participate in a meaningful way when they are consulted by the crown in connection with matters related to this act."

The simple reality is that although there is a constitutional requirement to consult, something that the courts have reinforced, far too often consultation does not happen. That lack of consultation results in conflicts such as we've seen at Big Trout Lake or Caledonia. This amendment not only emphasizes that the government has to consult with First Nations on a nation-to-nation basis, but that they have the funds needed to actually put together their analysis of the situation and respond in an informed, well-researched way. Failure to proceed with this sort of amendment will mean that effectively First Nations aren't given the respect that they deserve and will not have the tools with which to respond to requests for consultation. So I would say that the government said quite clearly today that they're going to respect the Constitution, that they have respect for First Nations. They should be adopting this amendment.

The Chair: Any comments, questions?

Mr. Wilkinson: Mr. Chairman, I can assure you that the government will respect the Constitution and include that bills drafted are in compliance with the Constitution. As well, I would reiterate that the courts have held that the crown cannot delegate its constitutional duty to consult with aboriginal peoples where such a duty already exists. Therefore, the nature of the amendment is again one of stating the obvious, which is already there. Beyond that, it actually binds the government in regard to a question of money and I do not believe that an opposition motion can be entertained by the committee where it binds the government to money. I believe it's the minister of the crown who has to make that a motion.

The Chair: Would you like legislative counsel to comment on that area?

Mr. Tabuns: Yes, please.

Mr. Beecroft: Standing order 56 says, "Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown."

So ultimately, the question of whether a motion does that or not is a question for the Chair to decide based on the arguments that the people may want to make. I don't know that there's anything more I can really say about that. There are Speaker's rulings on these issues from time to time.

The Chair: The Chair is not prepared to rule that out of order. We'll proceed to the vote.

Mr. Tabuns: Recorded.

The Chair: Recorded vote. Shall section 2.2, the reference to NDP motion 21, carry?

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 22.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"Exercise of powers

"2.3 In the administration of this act, the government of Ontario, the minister and all bodies subject to the provisions of this act shall exercise their powers in a manner that protects the environment and human health and that applies the precautionary principle."

It puts the precautionary principle, a guiding principle, in the body of the act and directs the government, the ministers, to take it into account in their exercise of powers. Notwithstanding the arguments that were made earlier, I would say that this has to be explicit in the act so that all those who are given authority to follow through on the act's direction understand that it is at the heart of the government's thinking. Frankly, if it's in legislation, it has greater weight than a commentary by the minister in introducing the bill.

1340

The Chair: Mr. Wilkinson?

Mr. Wilkinson: On behalf of the government, I can assure you that the minister will have regulations by the Lieutenant Governor in Council which will ensure that the precautionary principle will be reflected in all directors' rules and all regulations.

The Chair: If there are no further questions or comments—

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 23.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"Instruments before source protection plans take effect

"2.4 No instrument that has the potential to cause significant or irreversible harm to a source of drinking water in a vulnerable area shall be issued or otherwise created under any act unless a source protection plan has taken effect under this act for the source protection area to which the instrument relates."

Right now, we are in a period without this act in place, without its protections in place. There will be a period of transition. This amendment is intended to ensure that in the period of transition, until the act is fully in place, that damage that may occur to the environment will be forestalled, will be prevented, and thus the amendment before you.

The Chair: Any questions or comments? Seeing none, we'll proceed to the vote on NDP motion 23. Shall section 2.4 carry?

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

With the will of the committee, seeing as no amendments have been proposed so far for sections 3 and 4 together, we'll block consider both of these sections. The question therefore is, shall sections 3 and 4 carry? Carried.

We'll now move to section 5, NDP motion 24.

Mr. Tabuns: I move that section 5 of the bill be struck out and the following substituted:

"Other source protection areas

"5(1) The minister shall, not later than six months after this act receives royal assent, establish source protection areas under this act in all parts of Ontario that are not covered by the source protection areas established by subsection 4(1).

"Source protection authority

"(2) The ministry is the source protection authority for the source protection areas established under subsection (1)."

The government is protecting sources of drinking water in the parts of the province, largely in the south, covered by conservation authorities. I don't think that's equitable. There are concerns in other watersheds in this province, in the north and in central Ontario, that need this protection. We should be treating all sources of drinking water equally. Hence, the expansion of the scope of the act.

The amendment does three things. It requires the minister to establish source protection areas across the province. It says it has to be done in six months, so there's a timeline. It says the Ministry of the Environment will serve as the source protection authority; it designates who has responsibility. I would say, frankly,

that we do need to have this sort of amendment brought forward so that there's full coverage across this province.

The Chair: Thank you, Mr. Tabuns. Any further questions or comments? Seeing none, we'll proceed to the vote.

Mr. Tabuns: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 5 carry? Carried.

We'll now consider section 6. Seeing as no amendments have come forward, shall section 6 carry? Carried.

Mr. O'Toole: Seeing as these sections have carried already—I know it's maybe out of order. I'm just reading in these sections here that there are—a question to the parliamentary assistant: Are they actually going to close down some of the conservation authorities?

Interjections.

The Chair: It's open to debate, though. Mr. Wilkinson.

Mr. O'Toole: Because that's what it's basically saying here.

Mr. Wilkinson: What this bill talks about is the creation of source water protection committees, inspired by the work of Justice O'Connor. We see conservation authorities as a valuable resource in providing an appropriate template. Source water protection authorities are not identical to our conservation authorities. There are many cases where two or more will be brought together. They're already doing some common scientific work right now. So I would say that those two issues are divorced, that there may be some overlap with conservation authorities and source water protection committees but they're not mutually exclusive. This bill deals with the creation of source water planning committees and source water protection authorities.

The Chair: Thank you. If there are no further questions, we'll proceed to the consideration of the next section, PC motion 25.

Ms. Scott: Good. I move that subsection 7(1) of the bill be struck out and the following substituted:

“Source protection committees

“7(1) The minister shall establish a drinking water source protection committee for each source protection authority's source protection area and the committee shall be the lead authority with respect to terms of reference, the assessment report and the source protection plan.”

I think this was brought forward a lot from the presenters when we were on committee, that the appropriate role of the source protection authority or the conservation authority—and I know there's overlapping; we just had

that discussion. They are to facilitate the process and provide the technical assistance. So the source protection authorities must not be in the position to supplant the authority of the source protection committees.

With this amendment, the approach would ensure that there's a separation between the broad watershed responsibilities of the conservation authorities and the more narrow objectives of protecting drinking water sources within the watershed.

The Chair: Thank you, Ms. Scott. Are there any further questions or comments?

Mr. Wilkinson: We'll vote against this motion because we think it would actually undermine the approach that has inspired this bill about the necessity for this to be, as I said, from the groundwater up, using local people. It would effectively remove source protection authorities from their intended role in this bill. This motion would essentially have the province dictating who sits on source protection committees, and the government believes that these decisions should be made locally, in accordance with the minister's regulations. These decisions should not be made in Toronto. Rather, these decisions should be by the communities which will be affected by the source protection plan. The minister will appoint the chair, and the communities will appoint stakeholders, with recommendation.

Again, we think this is contrary to our intent as a government bringing this bill forward.

The Chair: Ms. Scott.

Ms. Scott: The minister will appoint the chair, and then who's going to select the committee members, again, just to maybe confirm that? Who does the selection of the committee members for the rest of the source protection committees?

Mr. O'Toole: The riding association.

Mr. Wilkinson: Now, Mr. O'Toole, even that's beneath you.

It's quite clear in the bill. What you're saying in your amendment, and perhaps you're not getting the intention that you want, is that somehow the minister should be appointing all of these people. There have been many, many stakeholders who have come, and I refer you to a further amendment where we're going to be broadening the number of people who can be on a source water protection committee so we can get the kind of cross-section that makes sense in that local area where people draw on the same drinking water. We're getting rid of the requirement that it must be 16.

In this process, stakeholders will identify themselves to the chair. We will, through regulations and amendments that will be proposed shortly, deal with the whole question about how these source water committees should be constituted so they truly do reflect those people who are drinking that water and those stakeholders.

This would actually negate any of the work that we have undertaken by amendment to respond to the stakeholders who have come and spoken to us, particularly that one week that we were on the road. We won't be able to vote for this. We would probably seek your

support on some of our further amendments about the source water committees and how they'll be struck.

1350

Ms. Scott: I appreciate the member's comments and I think that we heard that a lot at committee. If one agriculture representative is on, is it just from the dairy farmers, or are there more representatives? Going back to more of a grey area, there are amendments coming forward and, unfortunately, regulations. Maybe the government will commit to public hearings on the source protection committee's composition as they come forward in regulations.

Mr. Wilkinson: To work, it must be driven by the people, not by the ministry. That's really the intention of this bill. It might be simpler for us to have this kind of top-down approach, but we are committed, through this bill, to having a ground-up approach. So we can't preclude and prescribe right now that there will be a member from this group or that group. We're going to let each different committee make recommendation as to the best way to represent their own community. We had great debate over this about public health officials. If I'm a farmer, and I'm a reeve and I'm also the warden, do I wear one hat or three? All of these questions have to be dealt with, and we think the best way to do that is not to try to be overly prescriptive in this kind of top-down exercise, but actually allow this to come from the people most affected. It's just our approach to it.

Mr. O'Toole: To be quite direct about it, and complimentary to Ms. Scott for the work that she's done on this bill, it's clear that you've listened to the input from stakeholders, and Ms. Scott, here, who led that charge. That means that originally the committees were going to be appointed by the minister and there were 16. We were just quite concerned that, as with many of the other things you've done, it ends up being sort of a dog and pony show, technically, from your own caucus appointees, if you will.

So I'm happy to say that if I can believe what you say, that these committees will be appointed from local—like we have agricultural advisory committees in the municipalities today. Those kinds of consultations at the very genesis of this change are important. If that's your intention, I'd be supportive of that, but I haven't been able to believe many of the promises you've made in the last three years, so I have some uncertainty about going forward. It's like this bill; you've changed, I agree. You should go back to the drawing board and try to get this thing right. But anyway, there are my comments.

Mr. Wilkinson: I'm not surprised. When in doubt, you would have everything be run from the top down. Your history shows that and I'm sure that's exactly why you—

Mr. O'Toole: Chair, it's clear that he didn't listen.

The Chair: Thank you. If we might proceed to the vote, if there's no official commentary left. Those in favour of PC motion 25?

Mr. Wilkinson: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Flynn, Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: Defeated.

We now proceed to NDP motion 26.

Mr. Tabuns: I move that section 7 of the bill be amended by adding the following subsections:

"Time limit

"(1.1) Each source protection authority that is a conservation authority shall establish a source protection committee under subsection (1) not later than four months after this act receives royal assent.

"Same

"(1.2) Each source protection authority that is not a conservation authority shall establish a source protection committee under subsection (1) not later than six months after the authority's source protection area is established."

Mr. Chair, one of the problems that I have and others have with this bill is a lack of timelines, a lack of a sense of urgency for implementation. In putting forward this amendment, we are intending that there should be clarity about when these committees will be established. I'm trying to move this process along as quickly as possible.

The Chair: Thank you, Mr. Tabuns. Are there any further questions or comments on motion 26?

Mr. Tabuns: Just recorded, that's all.

The Chair: Recorded vote.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 27.

Mr. Wilkinson: I move that subsection 7(2) of the bill be amended by striking out "not more than 16 members" and substituting "the number of members prescribed by the regulations."

We've gone over this ground, Mr. Chair. I note that many of our environmental non-governmental organizations, agriculture, industry and municipal stakeholders all requested that source protection committees be flexible and representative of the local watershed. We believe that this amendment will go a long way in ensuring that all voices are heard.

Mr. O'Toole: Again, I commend the parliamentary secretary there for agreeing with Ms. Scott on this one. It's sort of like we've been moving this all through. I commend you on the amendment. We'll be supporting it.

The stakeholders you've mentioned that were excluded, and I think deliberately so—this is my suspicion. You've been forced in the public forum here to react to what we wanted all along: much more clarity and openness. So we'll be supporting this.

The Chair: We'll proceed to the vote. Those in favour of government motion 27?

Mr. Wilkinson: Recorded vote.

Ayes

Flynn, Leal, O'Toole, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed. Carried.
PC motion 28.

Ms. Scott: I move that section 7 of the bill be amended by adding the following subsection:

"Same

"(2.1) The members of the source protection committee,

"(a) shall have specific knowledge of water protection or of farming techniques and best practices; and

"(b) shall be representative of the community within the source protection area."

This goes back to our earlier discussion about concern for the composition of the committees, and whether all the stakeholders within that source protection committee area will be represented. I hope that the government would see to support this so that we ensure the source protection committees are representative of all the stakeholders that are involved in the area.

The Chair: Any comments?

Mr. Wilkinson: We won't be supporting the motion because we feel that the approach we've taken—Ontario is a very large province. We have to make sure that we do this from watershed to watershed, from ground watershed to ground watershed. The minister with her guidelines has made very clear that the people who will be appointed to source planning committees will have all of the material they need to make sure that they can make informed decisions on behalf of their neighbours.

Mr. O'Toole: Just a final summation. If you look at the previous amendment, the committee was making considerable progress. There was unanimous consent on that. It was on the expansion—a government motion, I might say.

Now we've come to an opposition amendment, proposal; a friendly amendment, if you will. I can see the blinkers already going up there. They're going to ignore any input from anyone except the civil servants who are here.

Mr. Wilkinson: It's great, Mr. Chair. I say, with all due respect, that if we hadn't seen the first two opposition motions that were intended to gut the bill and throw away three years worth of hard work, perhaps we'd have just a bit more faith. But we don't.

The Chair: We'll proceed now to the vote on PC motion 28.

Mr. O'Toole: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Flynn, Leal, Tabuns, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 29. Mr. Tabuns, the floor is yours.

Interjections.

Mr. Tabuns: Don't try to ruin my reputation, Kevin.

I move that section 7 of the bill be amended by adding the following subsections:

"Conflict of interest

"(4.1) Where a member of a source protection committee, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the committee at which the matter is the subject of consideration, the member,

"(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

"(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

"(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

1400

"Pecuniary interest

"(4.2) Sections 2 and 3 of the Municipal Conflict of Interest Act apply, with necessary modifications, for the purposes of determining whether a member has a pecuniary interest referred to in subsection (4.1).

"Where member to leave closed meeting

"(4.3) Where the meeting referred to in subsection (4.1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration.

"When absent from meeting at which matter considered

"(4.4) Where the interest of a member has not been disclosed as required by subsection (4.1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (4.1) at the first meeting of the committee attended by the member after the meeting referred to in subsection (4.1).

"Exceptions

"(4.5) Subsections (4.1) to (4.4) do not apply to a pecuniary interest that a member may have,

"(a) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member;

“(b) by reason of the member having a pecuniary interest which is an interest in common with residents of the source protection area generally; or

“(c) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.”

I am moving these amendments because the reality is that these source protection committees will be making decisions that can have an impact on very large investments. The changes, the assessments, the designations of land areas that change land use planning can, in the end, be of great consequence to people in an area who decide to build or not build a building in an area.

My experience—oh, the clerk has changed. You turn around for a moment and they metamorphose. Anyway, when you’re dealing with substantial changes in land use value, there will be interests in those decisions that will be quite substantial. We have to know that the committees that are dealing with these questions are free from conflict of interest. Thus, I propose that we incorporate conflict-of-interest guidelines, based on municipal conflict of interest, so that those who are making decisions that will have multi-million dollar impacts will be given guidance as to how to act and so that the public who are dealing with the decisions that flow from their deliberations have some confidence that people are acting in the general interest, not in a narrow interest.

I think it’s in the government’s own interest to have as clean a process as possible and one with the greatest possible credibility. Thus, I would urge the government to support this and I would urge the opposition to support this on the same basis. They are interested in holding the government accountable and want the operations of any bill to be clean and above approach, and should be supporting this on that basis.

The Chair: Any further questions or comments?

Mr. O’Toole: Just briefly, I do respect the motives for introducing this, but I put on the table the consideration that water is an essential element completely, in every respect, to all of us. Now, if in acting in good intent—there is a disclosure requirement at the beginning of every public meeting in terms of municipal as well as provincial engagements. But my sense here is—for instance, where I live in the country now, if it’s determined that somehow there is an aquifer or something, I would, with all good intentions, not have the knowledge to know that there was something that I could be potentially involved in affecting a downstream development. It could be a subdivision and ultimately they find out that there’s a reservoir. So I think you could be asking for a lot of litigation here, that other persons may find cause.

So I think a general provision of good intentions of disclosure; specifically, if you have a property that you’re in the midst of—that would be in violation of the act today, without even this on the table. So I can’t support it, but I want to be on the record as saying that it’s so broad here that every one of us who flushes a toilet, the waste water, potentially—or water-taking permits, or

someone who is in agriculture, the greenhouse business or whatever, where’s water’s a big, big issue, a huge issue. Let’s just keep this thing so that they can function at the municipal level without a lot more than is already in these conflict disclosure requirements.

Seeing how the clerk is back, it’s time to stop.

Mr. Tabuns: Just very briefly, Mr. Chair, land use plans will have to conform with the source protection assessments and direction. Effectively, we will be re-zoning land in watersheds. Zoning has significant financial implications. There will be people who will have a great interest in the outcome of these decisions. At the very least, we should regulate self-interest in these decision-making bodies using existing language from existing legislation that is commonly understood in this province and should be commonly applied.

The Chair: If there’s no further commentary, we’ll proceed now to the vote.

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 30.

Mr. Tabuns: I move that section 7 of the bill be amended by adding the following subsections:

“Public meetings

“(7) Every meeting of a source protection committee shall be open to the public.

“Municipal Freedom of Information and Protection of Privacy Act

“(8) A source protection committee is an institution for the purpose of the Municipal Freedom of Information and Protection of Privacy Act.”

As the act is written now, there is a lack of transparency and accountability. We heard that from numerous deputations. This amendment goes some distance to providing that transparency and accountability. Frankly, it’s just plain common sense. Meetings of the source protection committees should be open to the public, and people should be able to access information.

Mr. Wilkinson: I would say to the member opposite that in regard to the last matter and this matter, the way that we’re dealing with this is that we’ll be adding a proposed clause (m) to section 99, which we feel will be able to address this concern and allow the appropriate debate that needs to happen during the regulation-making process to unfold. I think we’re all in agreement with the principle. The question is, how do we do this? We’re looking forward to our amendment to section 99.

Mr. Tabuns: I would just say again that that puts it into the regulations and outside of the hands of law-

makers who, in this room and in the Legislature, should in fact be assessing those things in some depth.

Mr. O'Toole: With all good intentions, I am looking for some harmony here in these discussions. I think Mr. Tabuns makes a very good point, and I don't think it imposes any undue restrictions or encumbrances on the government.

I've looked at the amendment to 99, and it doesn't do anything of the sort. It is a very general amendment. It says, "governing the number of members of source protection committees," and "governing the operation." I would expect they would operate under existing laws or regulations governing these publicly constituted committees.

So I don't see why you wouldn't support this, and I'm appealing to you to find some harmony, that you would support Mr. Tabuns. It's strange that I'm trying to help Peter out here, but—

Mr. Tabuns: It is. It's frightening, John, but keep going.

Mr. O'Toole: It's not frightening. It's actually encouraging. If this place functioned properly—and it's not today. Today is evidence. They haven't supported one of your amendments. We've supported several of theirs. I can see we're going down the road here all their way, as if they are the only ones who ever had a decent, respectable, well-thought-out idea, which simply isn't the case. So I am asking for unanimous consent on this motion.

Mr. Wilkinson: I say to Mr. O'Toole, I think you'd have to have research go back and take a look at every bill ever drafted when you were in government and exactly how many opposition motions were ever adopted in eight years. So I find that just a wee bit rich from the member from Durham on this one.

The question here is, what is the basis? We believe in the principle, but we still believe that those people in the community have to come to this. That's why the minister has been very, very clear about how this is a matter that is going to go through the other process to ensure that all of these rules get dealt with.

1410

Mr. Tabuns: I have to say I find it extraordinary that you would not support having these meetings open and public.

Mr. Wilkinson: They will be.

Mr. Tabuns: Then put it in the legislation. You're asking it to be left to regulation. In fact, if it's left to regulation, as you have argued today, there may be a future government that doesn't like the idea of things being open. Put it in the legislation to strengthen the hand of the public to make sure it can get into these meetings, be there, observe the deliberations and hold decision-makers accountable.

Mr. Wilkinson: But there are consultations that are going on right now. This is a framework piece of legislation which sets out what O'Connor told us to do, and that's what we're trying to do here. There will be many, many things that are going to be determined by regu-

lation. There's not going to be a one-size-fits-all when it comes to protecting water. So what we've said is, we're having what is an open and transparent process to make sure that we have the buy-in from the communities. These are questions that are going to be raised. I think the public consultations that will inform this type of work allow citizens to actually comment on this in an open and transparent way, as opposed to what I think could be perceived, that that debate had already been precluded. We need to hear from the people. The whole process is about how to empower the people, not things coming down from above.

Mr. Tabuns: I would say, frankly, when it comes to public access to political deliberations of a body like the source protection committee, that's one of the things that I don't see as debatable. I think we've gone through a number of centuries of struggle for democratic rights, and one of the advantages of democracy is that those who are in that society have the right to be present when decisions are made and to hear what the debates are. All I'm saying is, you should embody that in this act and you should embody in the act the transparency necessary for decision-makers to be held accountable. I'm a bit taken aback that you wouldn't support public meetings being entrenched, respected, built into the act and approved by us such that a future cabinet couldn't roll it back.

The Chair: We'll proceed now to the vote on NDP motion 30.

Mr. Tabuns: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We'll consider now the section as a whole. Shall section 7, as amended, carry? Those in favour? Those opposed? Carried.

We'll now proceed to section 8, PC motion 31.

Ms. Scott: I move that section 8 of the bill be amended by adding the following subsection:

"Impacts to be considered, source protection plan

"(2.1) In preparing the terms of reference for the source protection plan, the source protection committee shall consider the social, cultural and economic impacts of environmental protection measures to be contained in the plan."

I think what we want to do here is to stress the consultative process, going back to the point earlier, the open public meetings, and to take a holistic as well as a scientific approach in the bill.

The Chair: Thank you. Any questions or comments? Seeing none, we'll proceed to the vote. Those in favour of PC motion 31?

Mr. O'Toole: Recorded.

Ayes

O'Toole, Scott.

Nays

Flynn, Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 32.

Mr. Wilkinson: I move that subsections 8(3), (4) and (5) of the bill be struck out and the following substituted:

“Resolution of municipal council

“(3) The council of a municipality in which any part of the source protection area is located may pass a resolution requiring the terms of reference to provide, for the purpose of subclause 13(2)(e)(ii), that the assessment report consider any existing or planned drinking-water system specified in the resolution, other than a drinking-water system prescribed by the regulations for the purpose of this subsection, if,

“(a) in the case of a drinking-water system that obtains its water from groundwater, the system has a well in the municipality that serves as the source or entry point of raw water supply for the system; or

“(b) in the case of a drinking-water system that obtains its water from surface water, the system serves a building or other structure located in the municipality.

“Location of wells and intakes

“(4) A resolution passed under subsection (3) is not effective unless it identifies the location of every well and intake that serves as a source or entry point of raw water supply for the drinking-water system.

“Resolution of upper-tier municipality

“(5) Subsection (3) does not apply to the council of an upper-tier municipality unless the upper-tier municipality has authority to pass bylaws respecting water production, treatment and storage under the Municipal Act, 2001.

“Resolution of lower-tier municipality

“(6) A resolution passed under subsection (3) by the council of a lower-tier municipality that does not have authority to pass bylaws respecting water production, treatment and storage under the Municipal Act, 2001, is not effective unless it is approved by a resolution passed by the council of the upper-tier municipality.

“Resolution after approval of terms of reference

“(7) A resolution may be passed even after the terms of reference are approved under section 10, but in that case, the resolution is not effective unless the terms of reference are amended under section 11.1.”

This addresses non-governmental environmental organizations and our municipal partners' request for additional flexibility regarding the inclusion of non-municipal systems and the ability to amend terms of reference.

The Chair: Thank you, Mr. Wilkinson. Mr. Tabuns.

Mr. Tabuns: Mr. Chair, through you to the parliamentary assistant, one of the big problems that I'm going to have with this is that you have in here, “other than a

drinking-water system prescribed by the regulations for the purpose of this subsection.” So there's a big black hole in the middle of this amendment that says, “There's a chunk here that you won't know about until after the regs come forward.” I called it a pig in a poke earlier; now it's a black hole. It doesn't matter. You're asking us to vote for something where I don't know what the exact terms are going to be. So that's a problem I have with this.

The other one that I have is: “(b) in the case of a drinking-water system that obtains its water from surface water”—I don't know why you wouldn't say “groundwater and surface water”—“the system serves a building or other structure located in the municipality.”

We had testimony in our hearings where people were talking about nursing homes or schools that drew their water from wells—groundwater, not surface water. So why are you limiting it to surface water and not addressing groundwater?

Mr. Wilkinson: My understanding is that we're addressing both of those concerns, and it has to deal with the issues that were raised by our stakeholders, particularly municipalities. As well, there's a further amendment to the bill, given the testimony from people about the necessity—that the minister should also have authority to designate in certain areas. I know that in a future government amendment that's coming, we're also making sure that the minister will have that authority, which at present is missing in the bill. So I see this as fitting in with the amendments that are coming subsequently this afternoon.

Mr. Tabuns: So there will be another amendment saying, “In the case of a drinking-water system that obtains its water from groundwater, the system serves a building or other structure located in the municipality”? Is that coming?

Mr. Wilkinson: Well, for that specific question, I will refer to our friends from the Ministry of the Environment, just so we can bring some clarity for you, Mr. Tabuns.

Ms. Cynthia Brandon: Cynthia Brandon from the legal services branch of the Ministry of the Environment. I just wish to clarify for you that clause 3(a) is dealing with groundwater, and clause 3(b) is dealing with surface water. It's just really where the intake is for the particular water. If it's groundwater, then it will be dealt with under clause 3(a). If it's surface water, the intake is—it had to do with the fact that a municipality's intake for their surface water may, in fact, be out in the lake, which isn't actually technically perhaps part of the municipality. So that's why we split it into groundwater in (a) and surface water in (b). So they are both, in fact, covered.

Mr. Tabuns: Thank you.

The Chair: If there are no further questions or comments on government motion 32, we'll proceed now to the vote. Those in favour? Those opposed? Carried.

Shall section 8, as amended, carry? Those in favour? Those opposed? Carried.

Section 9: NDP motion 33.

1420

Mr. Tabuns: I move that section 9 of the bill be amended by striking out “and” at the end of clause (a) and by adding the following clauses:

“(c) publish the proposed terms of reference on the Internet and in such other manner as the source protection committee considers appropriate;

“(d) give notice of the proposed terms of reference in accordance with the regulations to all persons who made oral or written representations to the source protection committee on the terms of reference, and to the persons prescribed by the regulations, together with information on how copies of the terms of reference may be obtained and an invitation to submit written comments to the source protection authority within the time period prescribed by the regulations; and

“(e) publish notice of the proposed terms of reference in all local newspapers in the source protection area, together with information on how members of the public may obtain copies of the terms of reference and an invitation to the public to submit written comments to the source protection authority within the time period prescribed by the regulations.”

The interest here, Mr. Chair, simply is to ensure that people who are interested in these matters are contacted, made aware of what’s going on and have an opportunity to give input. Frankly, to have them fully informed, to try multiple routes to contact them and ensure that they are part of the process, I think, is to the advantage of the province and to the bill.

The Chair: Thank you. Any comments?

Mr. Wilkinson: We’ll have a government motion on this subsequently.

Mr. O’Toole: As far as the debate goes, Ms. Scott and I considered this and we don’t see any problem with the openness that’s being proposed by the NDP. I’m anxious to see or hear what the parliamentary assistant is saying that they are bringing forward. Specifically, if you look at the implications of some of these plans in the source protection—the terms of reference, the resolutions of council, how it will affect land values and the risks going forward for landowners in those areas, the implications—I think there needs to be a widespread distribution so that everyone is given every opportunity, on the Internet and through the other forms of media, so that they are aware.

In planning today, there is a proper notice requirement for anyone living with or affected by a certain rezoning or official plan amendment that they get notice. So all he’s saying here is pretty much the same thing, that anyone who has made representations be given some formal notice. It may sound a big rigorous, but you know, you could be sitting on a potential risk yourself if you’re a landowner. These terms of reference are so broad, and in a technical way you wouldn’t know if there was an aquifer. There might be a stream in your backyard. You have no idea what the implications are. It could be next to a golf course and all of a sudden you’ve got this problem. Do you understand what I’m saying? I think you need to open it up.

It doesn’t seem you’re willing to accept one friendly amendment. The previous one was quite friendly, I thought [*inaudible*] on the meeting process. Now we’ve got this one here. Let’s see. I want a recorded vote on this too, but I am looking for some acquiescence here in terms of proper public process, public notice. We are trying to work co-operatively here, and certainly that’s—

The Chair: I think we all appreciate your spirit of co-operation, Mr. O’Toole. Given that, we’ll perhaps move to the vote on NDP motion 33.

Mr. Tabuns: Recorded.

The Chair: A recorded vote.

Ayes

O’Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We’ll proceed now to government motion 33.1, which again is part of the secondary package.

Mr. Wilkinson: I move that section 9 of the bill be amended by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding the following clause:

“(c) publish the proposed terms of reference on the Internet and in such other manner as the source protection committee considers appropriate, together with an invitation to submit written comments to the source protection authority within the time period prescribed by the regulations.”

We feel that the source planning committee itself should have the ability to determine in each and every source planning authority area what is the appropriate way of making sure that this information gets out to people and that that advice should be inspired by the people on the ground and not the people from up above.

The Chair: Thank you. Any comments?

Mr. Leal: Can I get a recorded vote on that one, please?

The Chair: Indeed you can. Any further comments? We’ll proceed to the vote.

Ayes

Flynn, Leal, O’Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: Carried.

Shall section 9, as amended, carry? Carried.

Section 10: NDP motion 34.

Mr. Tabuns: I move that subsection 10(1) of the bill be amended by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding the following clause:

“(c) any written comments received by the source protection authority after publication of the terms of reference under clause 9(c).”

I want to make sure that local people are well aware of what’s going on, that their local knowledge informs the decision-making process and, frankly, that their comments are passed on to the minister in the course of the minister’s considering the proposed terms of reference.

The Chair: Thank you, Mr. Tabuns. Any further comments?

Mr. Wilkinson: Mr. Chair, we’ll have a substantive amendment to subsection 10 momentarily.

The Chair: Thank you. Proceeding to the vote.

Mr. Tabuns: Recorded.

Ayes

O’Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated. Government motion 35.

Mr. Wilkinson: Mr. Chair, I just want to note that we are withdrawing government motion 35 and replacing it with government motion 35(a), if people would like to go to that.

Interjection.

Mr. Wilkinson: Pardon? Just give me one second.

The Chair: Mr. Wilkinson, from what I can determine, I believe your substituted motion is labelled 36.1. If you might verify that?

Mr. Wilkinson: We’ll just take a second here, Mr. Chair. I’m just going to check, since we want to make sure we get this bill right. If you’ll give me one moment.

Interjections.

Mr. Wilkinson: Okay. Now we’re all on the same page, 36.1.

The Chair: Mr. Wilkinson, the floor is yours. Motion 36.1.

Mr. Wilkinson: Thank you. I wouldn’t be the first party here today to walk in an amendment.

Mr. Tabuns: So motion 35 is gone, adios?

Ms. Wynne: It’s gone.

The Chair: Yes, Ms. Wynne is correct; motion 35 is gone. We will now proceed to NDP motion 36.

Mr. Tabuns: Fine.

Mr. Wilkinson: We’re in agreement.

Mr. Tabuns: I move that section 10 of the bill be amended by adding the following subsection:

“Additional drinking-water systems

“(4) Without limiting the generality of subsection (2), the minister may, on the request of any person, make an amendment to the terms of reference to provide, for the purposes of subclause 13(2)(e)(iii), that the assessment report consider any existing or planned drinking-water system specified by the minister that is located in the source protection area.”

This gives a mechanism allowing individual wells or groups of wells to be assessed if requested. This is giving the minister power, when requested by the public, to require the assessment reports to include any existing or planned drinking-water system in the source protection area and expands the scope of the bill.

The Chair: Thank you, Mr. Tabuns. Any comments on NDP motion 36?

Mr. Wilkinson: In the subsequent motion 36.1 that we’ll be presenting, we’ve had to make sure that we have consistency throughout the whole bill, so our legal team has drafted this to make sure that we do have consistency. We look forward to that.

The Chair: Thank you. We’ll proceed to the vote.

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Now returning to government motion 36.1, replacement of government motion 35.

1430

Mr. Wilkinson: I move that section 10 of the bill be struck out and the following substituted:

“Submission to minister

“10(1) The source protection authority shall submit the proposed terms of reference to the minister, together with,

“(a) any comments that the source protection authority wishes to make on the proposed terms of reference;

“(b) the summary of concerns referred to in clause 9(a); and

“(c) any written comments received by the source protection authority, within the time period prescribed by the regulations, after publication of the proposed terms of reference under clause 9(c).

“Minister’s options

“(2) The minister shall,

“(a) approve the terms of reference; or

“(b) require the source protection authority, within such time period as is specified by the minister, to,

“(i) amend the terms of reference in accordance with the directions of the minister, and

“(ii) resubmit the terms of reference to the minister.

“Resubmission

“(3) If terms of reference are resubmitted to the minister under clause (2)(b), the minister may,

“(a) approve the amended terms of reference; or

“(b) approve the amended terms of reference with such additional amendments as the minister considers appropriate.

“Failure to resubmit

“(4) If terms of reference are not resubmitted to the minister under clause (2)(b) within the time period specified by the minister, the minister may approve the terms of reference with such amendments as the minister considers appropriate.

“Exception

“(5) The minister may not require or make any amendment to the terms of reference under subsection (2), (3) or (4) that prevents an assessment report from considering any drinking-water system specified in a resolution passed under subsection 8(3).

“Additional drinking-water systems

“(6) Without limiting the generality of subsections (2), (3) and (4), the minister may require or make an amendment to the terms of reference to provide, for the purposes of subclause 13(2)(e)(iii), that the assessment report consider any existing or planned drinking-water system specified by the minister that is located in the source protection area.

“Same

“(7) Despite subsections (2), (3), (4) and (6), the minister shall not require or make an amendment to the terms of reference to provide, for the purposes of subclause 13(2)(e)(iii), that the assessment report consider an existing or planned drinking-water system prescribed by the regulations for the purpose of this subsection.”

This replacement government motion particularly deals with a lot of the concern that was raised in committee about the role of the minister in regard to the terms of reference and provides greater clarity to that and accountability and responsibility on behalf of the government.

Mr. O'Toole: I fully agree and, one more time, I'd sort of try to be co-operative here. I'd be asking for a recorded vote on this one. We'll certainly be supporting it in the general terms of openness here and, respectfully, what the NDP was trying to work toward, I believe, as well. It's in that tone that I think we should try to find some consensus here on this important bill. Recorded vote, please.

The Chair: Thank you, Mr. O'Toole.

Ayes

Flynn, Leal, O'Toole, Ramal, Scott, Wilkinson, Wynne.

Nays

Tabuns.

The Chair: Carried.

Shall section 10, as amended, carry? Carried.

We'll now proceed to NDP motion 37.

Mr. Tabuns: I move that the bill be amended by adding the following section:

“Publication of decision

“10.1 As soon as reasonably possible after the minister makes a decision whether or not to amend the terms of reference under subsection 10(2), the minister shall publish notice of the decision on the environmental registry established under the Environmental Bill of Rights, 1993, together with,

“(a) a brief explanation of the effect, if any, of any comments and other material submitted under subsection 10(1) on the minister's decision; and

“(b) any other information that the minister considers appropriate.”

We're saying the minister has to publicly post and explain reasons for amending or not amending the terms of reference. Again, it's the whole question of transparency and accountability, making sure that the public can see what's going on and making sure the minister knows the public will know what's going on.

The Chair: Thank you. Any further comments? We'll proceed to the vote.

Mr. Tabuns: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 37.1.

Mr. Wilkinson: I move that the bill be amended by adding the following section:

“Publication of approval

“10.1 As soon as reasonably possible after terms of reference are approved by the minister, the minister shall publish notice of the approval on the environmental registry established under the Environmental Bill of Rights, 1993, together with,

“(a) a brief explanation of the effect, if any, of the comments and other material submitted under subsection 10(1) on the minister's decision; and

“(b) any other information that the minister considers appropriate.”

The Chair: Any further comments? Seeing none, we'll proceed to the vote.

Mr. Tabuns: I just wanted to say again that imitation is the sincerest form of flattery.

The Chair: Thank you for that truism, Mr. Tabuns.

Mr. Wilkinson: Let the record show that I, the parliamentary assistant, echo that sentiment.

Interjection: Recorded vote.

Ayes

Flynn, Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: Carried.

Now NDP motion 38.

Mr. Tabuns: I move that the bill be amended by adding the following section:

“Deadline for terms of reference

“10.2 The minister shall take such steps as are necessary to ensure that he or she makes a decision whether or not to amend the terms of reference under subsection 10(2) not later than six months after the source protection committee is established under section 7.”

Again, we need timelines. We need to be setting targets for the ministry, for the source protection committees and for the source protection authorities. Frankly, to leave this work without timelines and targets means that we will wind up with nothing happening. With too many pressures in life, if there are not timelines and targets, then an item is simply going to be missed. I'd urge the government to actually put a little more teeth into the act with this amendment.

The Chair: Thank you, Mr. Tabuns. Any comments?

Mr. Tabuns: Recorded vote.

The Chair: Shall section 10.2, with reference to NDP motion 38, carry?

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Section 11, NDP motion 39.

Mr. Tabuns: I move that section 11 of the bill be amended by striking out “available to the public” and substituting “available to the public on the Internet and in such other manner as the source protection authority considers appropriate.”

Again, it's to make sure that information is as widely available as possible and as accessible as possible to the public.

The Chair: Thank you. Any comments?

Mr. Tabuns: Recorded vote.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 40.

Mr. Wilkinson: Mr. Chair, we withdraw government motion 40 in favour of government motion 40.1.

The Chair: Please proceed.

Mr. Wilkinson: I move that section 11 of the bill be struck out and the following substituted:

“Terms of reference available to public

“11. If the minister has approved terms of reference, the source protection authority shall ensure that the terms of reference are available to the public as soon as reasonably possible on the Internet and in such other manner as the source protection authority considers appropriate.”

I want to thank the member for Toronto–Danforth for bringing this to our attention but we feel, from a practical point of view, that it is important that the committee that has the responsibility should best inform how that information is distributed. At the very least, of course, it has to be on the Internet, but specifically where it should be to make sure that people get the information should be left in their hands.

Mr. Leal: A recorded vote.

Mr. O'Toole: I was just going to say the same thing.

The Chair: Thank you both. We'll proceed now to that recorded vote.

Ayes

Flynn, Leal, O'Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed. Carried.

Shall section 11, as amended, carry? Carried.

We now proceed to government motion 41.

1440

Mr. Wilkinson: I move that the bill be amended by adding the following section:

“Amendment of terms of reference

“11.1(1) The source protection committee may propose amendments to the terms of reference in the circumstances prescribed by the regulations.

“Same, minister

“(2) The minister may order a source protection committee to prepare amendments to the terms of reference in accordance with directions set out in the order.

“Consultation

“(3) In preparing an amendment under subsection (1) or (2), the source protection committee shall consult with the municipalities that are affected by the amendment.

“Application of ss. 9 to 11

“(4) Sections 9 to 11 apply, with necessary modifications, to an amendment under subsection (1) or (2).”

This motion would add a new section to the bill to allow for the amendment of terms of reference. Consultation with affected municipalities would be required before the amended terms of reference are provided to the source protection authority and the minister for approval.

I can say that it addresses many of the concerns raised by our environmental stakeholders in regard to non-municipal systems. As well, we heard comment on Hansard from the Trent Conservation Coalition, the Raisin Region Conservation Authority and South Nation Conservation.

The Chair: Thank you, Mr. Wilkinson. Mr. O'Toole.

Mr. O'Toole: It still goes back to the same section, the minister too: "The minister may order a source protection committee to prepare"—in other words, it's sort of like they are being ordered how to vote—"amendments to the terms of reference in accordance with directions set out in the order." At the end of the day, the minister and cabinet in secret will be running this thing. I can't support that.

Mr. Wilkinson: I just want to quote from Hansard. I remember having a specific conversation with Mr. Meek of the Raisin Region Conservation Authority; I believe we were in Cornwall. I said to Mr. Meek, "So you'd have a double check there to make sure we're not missing people who really should have the benefit of making sure that their water is safe?" And he replied, "The Clean Water Act should allow these non-municipal areas to be studied in the same respects as the municipal areas," so I find it interesting to watch my friend from Durham vote against the government motion. I know I'll be voting for it.

The Chair: Thank you. We'll proceed to the vote.

Mr. O'Toole: Mr. Chair, it's a matter of integrity here. I would say that as much of this bill is being dealt with in amendments, as much of it is being dealt with in regulations, more of what we're actually voting for is unseen than is seen. Quite frankly, on this particular one I'm suggesting that this person you referred from the conservation authority at the municipal level isn't here. In fact, what this does is give the minister final say. If you've read this, the minister has the final say by order or terms of reference. So the local municipality that you're downloading to now has to go out and spend the money to do these studies and source area definitions and all these various things and there's not one cent for them for enforcement. So they're being handed here pretty onerous responsibility and liability.

Really, this is what you're doing. Ultimately, you're technically circumscribing to get around the liability issues in this file. I can see this clearly now. The minister can say that they can have input. They're responsible for enforcement and their recommendations, public notice and all that stuff. They're the ones who are going to have to put the websites up and pay for all these public notices and all the newspaper articles. This is downloading of a major, major responsibility. I'm certain that the members over there don't get it, but that's what is happening here.

Thank you for the opportunity to make that clear. Yes, I'm happy to have a recorded vote on this. No, I won't be supporting it.

Mr. Wilkinson: Following those comments, I know the good member from Durham always brings a unique paradigm to all the discussions that he brings to the House. I say that with the greatest sense of charity and humour.

We were very clear, when we heard from stakeholders, that they thought it was a fundamental flaw of the bill that the terms of reference did not have the full accountability of the minister behind it, as do other sections. I think this is a necessary amendment. It pro-

vides a certain amount of reasonableness to ensure that if a municipality were to decide to exclude a local nursing home, for example, the minister could look at that issue and ensure that that is part of it.

In regard to the member's allegations about the enforcement provision, I'm sure he'll be supporting our amendment in regard to the ultimate liability of enforcement of the bill when it comes forward later on in discussion.

Mr. O'Toole: The whole bill is being dealt with through amendments.

The Chair: If there are no formal comments, we'll move to the vote.

Shall section 11.1, which refers to government motion 41, carry? I understand it's a recorded vote.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Scott, Tabuns.

The Chair: Carried.

Section 12: NDP motion 42.

Mr. Tabuns: I move that subsection 12(1) of the bill be amended by striking out "shall be deemed to require consideration of" in the portion before paragraph 1 and substituting "must comply with."

The act is problematic in that there is no real meaningful protection for the Great Lakes themselves, and we all know its importance in terms of drinking water for Ontarians. We believe that the act should have been a starting point for future provincial actions to protect the Great Lakes.

Right now, source protection authorities only have to consider various agreements, when in fact there are agreements here that they shouldn't just be considering but should be complying with. So this amendment makes protection of water quality and quantity of the Great Lakes a central component of the terms of reference. Frankly, we should be complying with these domestic and international agreements. I'm surprised it was not in the original act proposed by the government.

I would ask the official opposition, along with whichever government members are in the mood for it, to come along and vote in favour of this amendment.

Mr. Wilkinson: I appreciate the amendment. I know that if you look ahead to the government package in regard to section 76, you'll see that, let alone that we were told in committee, I believe, that the province was going to set a gold standard for those of us in the Great Lakes watershed, this will probably set a platinum standard which other provinces and states will want to emulate in regard to the strengthening of the question of making sure targets are incorporated as consideration by those source planning authorities that have water flowing into our Great Lakes. So we feel that that package in

section 76 is the appropriate way to deal with the matter, given the fact that it is one of cross-jurisdiction between us and our federal government. But that's the appropriate place to deal with this issue.

Mr. O'Toole: I think on this bill—it's quite interesting. I was at that conference, as I said, this summer in Chicago that made reference to this particular water quality agreement and a couple of other acts that are signed by the states and the provinces. In fact, I think for the record it's important that the first agreement was signed by Norm Miller's father, Frank Miller. It's quite interesting. I have a copy of that agreement that was signed.

Here's the difficulty I have with this NDP amendment changing it to "must comply with." I think the parliamentary assistant is probably right. Given the importance of water, the continuous review of all those—as our knowledge increases, we realize that some of those agreements themselves that he's implying "must conform with" may be inadequate. There are challenges in the courts on bottled water and a whole bunch of other issues that weren't thought to be issues at the time of the drafting of those source protection issues.

So I tend to support this, to "require consideration," because if it was "must comply with," they're out of date, many of those agreements, going back to the 1970s and 1980s. So I'll be supporting the current wording that the government has in the legislation.

The Chair: If there are no further questions or comments, we'll proceed to the vote on NDP motion 42.

Mr. O'Toole: Recorded vote.

Ayes

Tabuns.

Nays

Leal, O'Toole, Ramal, Scott, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 12 carry? Carried.

Section 13: government motion 43.

1450

Mr. Wilkinson: I move that the English version of subclause 13(2)(c)(ii) of the bill be amended by striking out "ground water and surface water" and substituting "groundwater and surface water."

Explanation—I think there's one required. This motion is made to ensure consistency in drafting throughout the bill in setting out "groundwater" as one word rather than two. It is always important that we are consistent in our legal application. I earnestly seek all-party support on this.

The Chair: If there's no further commentary, we'll proceed to the vote. Those in favour of government motion 43? Those opposed? Carried.

NDP motion 44.

Mr. Tabuns: I move that clauses 13(2)(d) to (g) of the bill be struck out and the following substituted:

"(g) identify, for each watershed identified under clause (a),

"(i) existing activities that are drinking water threats,

"(ii) possible future activities that would be drinking water threats, and

"(iii) existing conditions that result from past activities and that are drinking water threats;"

This amendment requires that we have protection for all watersheds in the source protection areas. Instead of only requiring that surface water protection zones and wellhead protection areas related to existing and planned municipal drinking water systems be identified in assessment reports, we're requiring that all existing and possible future drinking water threats are identified in the entire watershed, including private water systems.

The emphasis on municipal water systems in southern Ontario omits private water systems and water systems in parts of central and northern Ontario.

This came at us quite consistently in the course of the hearings. People wanted coverage beyond municipal drinking water systems. They wanted it extended. That was pretty clear from cottagers; that was pretty clear from other environmental groups. I think this is a reasonable amendment to the act that allows for a broadening of protection and that has public support.

Mr. Wilkinson: In response to the member from Toronto—Danforth, a couple of things. We just passed an amendment that actually, in our opinion, deals with this issue of those people who perhaps are not covered, because we've just given the minister, after some debate, the ability to designate. This is a vast province, and it is important that now he or she has the ability to do that.

In this amendment, which I think is intended to broaden the scope, I hearken back to the words of Justice O'Connor, because I feel our function here is to, in a sense, complete a chapter of history that was opened with the tragedy in Walkerton, and I feel that this bill is part of that. So in a sense, I'm inspired by what he said.

On page 105 of part two of the Walkerton inquiry, Justice O'Connor indicates that source protection plans should identify the areas where "a significant direct threat exists to the safety of drinking water...."

Then again, on page 106 of part two of the Walkerton inquiry, the good justice states, "I envision that the planning process would identify areas where the protected measures for drinking water sources are critical to public health and safety, and that in such cases, the plan would govern municipal land use and zoning decisions. However, other measures in the plan need not require such rigidity," I would assume because he considered the vastness of this province. And so we believe that the bill as currently drafted by the government actually fulfills the intention of the recommendation of the one person who probably gave the greatest consideration, the greatest thought, to this whole issue.

The Chair: Thank you. Any further comments on NDP motion 44? Seeing none, we'll proceed to the vote.

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Leal, Ramal, Wynne, Wilkinson.

The Chair: Defeated.

NDP motion 45.

Mr. Tabuns: I move that clause 13(2)(e) of the bill be struck out and the following substituted:

“(e) identify all the surface water intake protection zones and wellhead protection areas that are in the watersheds identified under clause (a) and that are related to existing and planned drinking water systems;”

This is not as comprehensive as my previous amendment, but it does require that surface water intake protection zones and wellhead protection areas related to existing or planned drinking water systems be addressed in assessment reports in all source protection areas across the province regardless of whether the drinking water system is municipal or not.

I tried for a higher standard with the previous amendment. Not getting it, I'm trying for the next best thing.

The Chair: Thank you. Are there any comments?

Mr. Wilkinson: Same arguments.

The Chair: We'll proceed to the vote.

Mr. Tabuns: Recorded.

The Chair: Recorded.

Ayes

Tabuns.

Nays

Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 46.

Mr. Tabuns: I've had it suggested to me that I need to change the numbering on this.

I move that clause 13(2)(e) of the bill be amended by striking out “and” at the end of subclause (i), by adding “and” at the end of subclause (ii) and by adding the following subclause—I'm sorry. I'm going to stop for a second.

Mr. Clerk, you suggested that I would have to change the number here to 10(6). I'm not fully aware of which numbers apply to which.

The Clerk of the Committee: You had an earlier amendment, number 36. If that amendment in and of itself didn't carry, this one on its own would be out of order. There was a subsequent government amendment that came in behind that. This can still be in order if in fact you're referring to their numbering and not the earlier amendment that was defeated.

Mr. Tabuns: So am I talking about subclause (vi) or subsection 10(6)?

The Clerk of the Committee: Subsection 10(6). You're making reference to their amendment.

Mr. Tabuns: Right. Okay, I see. So—“(iii) existing and planned drinking water systems that, pursuant to an amendment to the terms of reference that was made by the minister under subsection 10(6), the terms of reference provide for the assessment report to consider;”

This amendment requires that, for the existing or planned drinking water systems the minister adds under our amendment 10(6), all surface water intake protection zones and wellhead protection areas are to be identified, again, to expand the scope of coverage of this bill.

The Chair: Thank you, Mr. Tabuns.

Mr. Wilkinson: We have the same arguments in opposition.

Mr. Tabuns: Recorded vote.

The Chair: We'll proceed to the vote.

Ayes

Tabuns.

Nays

Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We'll now move to PC motion 46.1.

Ms. Scott: I'll leave it to the clerk to clarify if I have to amend some of this wording if it's affected by the previous amendments we've passed. But I'll read it out.

I move that clause 13(2)(e) of the bill be amended by striking out the portion before subclause (i) and substituting the following:

“(e) identify all the surface water intake protection zones, wellhead protection areas and surface right properties within vulnerable areas that are in the watersheds identified under clause (a) and that are related to:”

This comes from stakeholders in many municipalities to keep the decision-making at the local level: for those municipalities with large populations on surface rights properties and known vulnerability to act to safeguard drinking water and initiate the process that I believe was envisioned in the act. Other municipalities may have different circumstances, so they could choose not to act in that manner.

The Chair: Thank you, Ms. Scott. Any further comments? Seeing none, we'll proceed to the vote on PC motion 46.1.

Mr. O'Toole: Recorded.

Ayes

O'Toole, Scott.

Nays

Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 47.

Mr. Tabuns: I move that clauses 13(2)(h) and (i) of the bill be struck out and the following substituted:

“(i) for each activity and condition identified under clause (g), specify the location where, or area within

which, the activity or condition is or would be a drinking water threat; and”

It's a question here of using the term “drinking water threat” instead of “significant drinking water threat.” If it's a threat, it's a threat, and I don't think it needs to be modified by the word “significant.”

1500

The Chair: Thank you. Any comments?

Mr. Wilkinson: I'm with O'Connor on this one, Mr. Chair.

The Chair: Proceeding to the vote, those in favour of NDP motion 47?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 48.

Mr. Wilkinson: I move that clauses 13(2)(d) to (i) of the bill be struck out and the following substituted:

“(d) identify all the significant groundwater recharge areas and highly vulnerable aquifers that are in the source protection area;

“(e) identify all the surface water intake protection zones and wellhead protection areas that are in the source protection area and that are related to,

“(i) existing and planned municipal drinking-water systems that serve or are planned to serve major residential developments,

“(ii) existing and planned drinking-water systems that, pursuant to resolutions passed under subsection 8(3), the terms of reference provide for the assessment report to consider,

“(iii) existing and planned drinking-water systems that, pursuant to an amendment to the terms of reference that was required or made by the minister under subsection 10(6), the terms of reference provide for the assessment report to consider,

“(iv) existing and planned drinking-water systems prescribed by the regulations that serve or are planned to serve reserves as defined in the Indian Act (Canada);

“(f) describe the drinking water issues relating to the quality and quantity of water in each of the vulnerable areas identified under clauses (d) and (e);

“(g) list, for each vulnerable area identified under clauses (d) and (e),

“(i) activities that are or would be drinking water threats, and

“(ii) conditions that result from past activities and that are drinking water threats;

“(h) identify, within each vulnerable area identified under clauses (d) and (e),

“(i) the areas where an activity listed under clause (g) is or would be a significant drinking water threat, and

“(ii) the areas where a condition listed under clause (g) is a significant drinking water threat; and”

Mr. Chair, I know that this addresses a number of recommendations, which we had from environmental NGOs, from First Nations and other non-municipal systems, that they would be included in the planning process. I would say in particular that it deals with the whole issue of class of activity, which is a recommendation that we heard loud and clear from a number of our affected landowners and farm groups.

The Chair: Mr. Leal.

Mr. Leal: Mr. Chair, this is a substantial amendment, and because it is, I'll be asking for a recorded vote on this one.

The Chair: Thank you, Mr. Leal. Mr. O'Toole.

Mr. O'Toole: I guess this one here, with the recorded vote and to give some explanation of why I'll be voting against it, you have to look at the entire section 13, which in the public's mind—perhaps the parliamentary assistant could allay some of these suspicions, your motives. If you look at a section here that has not been amended, subsection (2), and if you look at primarily “Assessment reports,” “Contents,”—and I'll only identify a couple of things—first it says:

“An assessment report shall, in accordance with the regulations, the rules and the terms of reference” do the following things: identify all the watershed areas—that's great; characterize the water quality and quantity—now we're starting to get into the quantity thing; set out a water budget and also identify “the different ways that water enters and leaves the watershed.” You get into water-taking permits and measuring.

This is where the public believes this is the first step towards metering wells. I put to you, unless you're going to be honest here and tell them, how can you measure quality and quantity unless you're actually measuring all the outputs on water-taking permits as well as my well? If you aren't measuring it, you can't do the job. And if you are, why don't you be honest with the people and say you are going to be actually metering all the wells? I don't have a problem with that. What I have a problem with is, again, the process of honesty, of openness. Just tell the people the truth for a change.

This is quite serious, and I don't want any side-stepping on the issue. This is what this section is doing. I agree with the quality issue; Mr. Tabuns does; everyone does. You are going to be setting out in regulation—are you going to establish these things under the various watershed areas?

The quality and the quantity comes next. The quantity is going to be that every little bubbling, percolating area in the province is going to have to be monitored by some engineer, not some clerk—a whole regime of people out there, up in the Laurentians and all over, in the forest and various things, taking all these water samples and measuring and metering.

Look, just be honest. This is not doable as it's described here. Tell the people that you're actually going to be measuring the quantity of water, and that means metering it and charging them for it. Just be honest. I didn't say I was against it.

Mr. Wilkinson: We're still trying to figure out how the Laurentians got into Ontario, but anyway. They might be in another province. Anyway, that's the other side of the Ottawa River.

I know in the rather fevered mind of the member from Durham—I have never seen someone start connecting non-existent dots.

Let's just be clear. First of all, there is no metering of private wells, and it does not say that. It is in your very vibrant imagination; only you could come up with something like this.

Interjection.

Mr. Wilkinson: Exactly, when we're geographically challenged.

If I follow the kind of convoluted logic of the member from Durham, he somehow believes that this bill requires the government of Ontario or source planning protection to monitor every molecule of water; far from it. There's something called the science of hydrogeology. Perhaps when you were just a lad in high school, they didn't have that, but we have that now in Ontario, and that's what's inspiring all of the work that's being done, some \$120 million worth of work that's being done. No one is suggesting that every molecule will be monitored, but how can we value something if we don't know how much is coming in and how much is going out?

We already have a regime where there is metering of commercial wells. People have permits to take water. It does not require a rocket scientist but perhaps somebody with just some common sense and just a little bit of scientific method to be able to come up with, in regard to every watershed, an assessment of something that has not been done in this province; that is, trying to get a handle on that great pristine reservoir that we are privileged as citizens of this planet to be stewards of, whether it is the Great Lakes, one of the greatest sources of fresh water on the planet, or—as the deputy mayor of Walkerton told us, we are sitting on an asset that perhaps is five times greater, underneath our feet. So it is important for us to be able to create not just the question of quality, but also of quantity.

No one is suggesting or has suggested, other than some opposition members up to perhaps some nefarious no-good, that somehow we're going to have monitoring of every source of water. But we do have a sense of what's going into an aquifer, and we also have an ability to monitor what is going out. That's what will inform the water budget, and for those who want to postulate and hypothecate all over this province to try to spread misinformation, you go right ahead. We'll go with the bill and what it says, which is very clear and doesn't actually allow for any fevered speculation.

The Chair: Thank you. Ms. Scott.

Ms. Scott: Just to follow up my colleague Mr. O'Toole, who made a very valid point, we have to say, in

Peterborough—although I can't remember the stakeholder that presented. The fact that you want to, in the surface water intake zones, account for the amount of water going out—you're saying you're not going to meter the wells within that zone, but how are you going to know? So it's what's not in the bill that's scaring a lot of the people. I think that's what Mr. O'Toole and a lot of the stakeholders were trying to mention to you, suggest to you. You said we're instilling fear. We didn't have to instill fear at all. These people read the bill themselves, and it's what it didn't say that's scaring them and its relation to monitoring of their private well system. So just explain how you're going to make these mechanics work, if you can.

Mr. Wilkinson: The bill is not dealing with every molecule of water. It's dealing with an assessment report that is not based on my well or someone else's well; it is based on the entire aquifer of the region where people draw on the common source of drinking water. Not every molecule coming in or going out can be measured, but obviously science and the advancing science of hydrogeology are allowing us to get to a position where we can agree on the amounts coming in and going out and, therefore, determine a budget.

1510

I think one of the most forward-thinking things of this bill is that it goes beyond just the issue of quality and also addresses the one of quantity. It is a leap of Herculean proportion to somehow address in this bill, when it's dealing with the entire watershed of, say, everybody in the Thames River valley, that somehow this bill has to do with each and every private well. It's a canard; it's wrong; it keeps on being replicated. There is nowhere in the bill that it says that that is exactly what is happening. It takes a certain amount of either informed or misinformed speculation to read into a bill something that clearly is not there.

Mr. Tabuns: I'm concerned with this section, not because it expands the areas that are going to be examined but because their protection still relies on undefined phrases or words such as "significant drinking water threat." I don't know how good the protection is that I'm voting for or against and I find that highly problematic.

I also don't like the fact that in the original clause there was provision for assessment of future risks which seems to have been dropped from this amendment. So both because of a great lack of precision and because of what appears to be a reduction in the scope of the assessment of risk, assessment of concern, I can't support this amendment.

Mr. O'Toole: I misspoke. I suppose I was referring to northern Ontario, the Laurentian Shield, and that's what I believe serves as an important breakwater for water recharge and discharge in the province; more specifically, in the broadest sense, even if you're determining the taking of water, whether it's through a water bottle company or for a large livestock operation that is taking, as the footprint of agriculture increases, larger and larger quantities of water and must have clean and safe water for livestock.

We understand that, and it's becoming more important input. That's what this needs to clarify. You can say it now, and I would prefer to see it in writing from the minister. I don't mean to be personal or critical. I'm just saying that that's what the public believes. If you're doing it directly at some meter on some wellhead—and there are parts of this bill that say “every well,” so it is at the micro level. The previous sections we've already dealt with said that every well must be identified, and there are certain wells that must be capped and closed appropriately and all that, which is unimportant. It's the obsequious nature of how you're going about this to avoid telling people how you're going to measure it. Are you going to look at the broad science of it? Say here's an aquifer. There are 19 farms, 4,000 livestock heads, here's the ministry's management plan, and model all this stuff, which is probable, and then say, “In this area, on the tax bill will be the following charge.” That's what you're going to be doing, because all of this monitoring is going to be paid for by the people in that watershed. That's how it's going to be paid for. The government doesn't have any magic chequebook anywhere except those users.

We do agree with safe, clean quantities of drinking water—nobody has a problem with that—but be honest with the people. That's what it is. I look at the members here who aren't even really participating in the debate; they're just having lunch and voting yes when John tells them. This is a very serious bill. We heard from across Ontario. It's complicated from the point of view that many people don't have the opportunity and we have to ask questions and get research material from staff. You're trivializing many of the concerns that are out there and you've changed some things here which we've agreed with.

Let's turn this around and try to find a little line of co-operation on this thing, because right now I see you've got a script, you've got several ministry people on a technical bill, and, “These are the ones you vote yes on,” Jeff, Kevin, Khalil, Kathleen and the rest.

Interjection.

Mr. O'Toole: I said Kevin. “And here are the ones you vote no on.” The “no” votes are all the NDP ones and all the Conservative ones, and I put to you that some of them are well considered from our stakeholders and they're going to be disappointed. I can tell you that this section is troubling because of its lack of clarity, honesty and openness. That's what is missing. Some of the amendments I kind of agree with, but the general thrust here is what is not on paper.

Mr. Wilkinson: I think there are three things we can do. We can recall Hansard, where my minister said clearly in the Legislature, on the record, that domestic wells will not be monitored. I don't know how much clearer it can be, but some people don't want to listen to what our minister has to say. If they want to keep on spreading disinformation in a partisan fashion, they can.

I would say to my friend from Toronto—Danforth, in regard to future activities, I read the amendment that I put in with (g)(i), “activities that are or would be drinking

water threats,” so it seems to me that that speaks to the whole issue of the future.

Just so we all have a primer on hydrogeology, I'd like to ask one of our good friends from the ministry to come up so that we understand that those people who are running around the back country saying that somehow this is voodoo science are absolutely wrong. There have been tremendous advances made in regard to science, in regard to hydrogeology. I was just wondering if you might be able to join us, Ian. Thank you.

Mr. Ian Smith: My name is Ian Smith. I'm the director of the drinking water program management branch at the Ministry of the Environment. We've been working with our colleagues at the Ministry of Natural Resources now for about 18 months to draft technical guidance and rules that water resources engineers will be following as they do the water budgets for each of these watersheds. In particular, we've been developing a tiered set of rules or directions for these water resource engineers to follow who are currently working at the conservation authorities. So they initially do a sketch water budget for the entire watershed. In areas where municipalities are taking water for drinking water supplies, they do a more detailed budget. Where they sense from that more detailed budget that there may be a water shortage, they will then go to a further, more detailed budget.

Finally, if at the end of all that they've come to a point where they believe there's an overallocation of water, they would go to a full-scale, quantified water quantity budget that would feed directly into the semi-quantitative risk assessment, and would allow us to calculate at the source protection committee that there was a significant risk for water shortages in that aquifer or that surface water system.

Through all of that, the direction we have been providing is that they will estimate water-takings from things such as the multiple private systems or systems which are currently not required to report their water-takings, such as under the permit to take water program.

Mr. O'Toole: With due respect, my next-door neighbour is Walter Gibson. He has I believe a Ph.D. in agronomy. He does all the water studies for Durham region. You can look up his name. I've spoken to him on it and he says that, yes, they can model these data, as you've described in other terms, so I'm not completely misspoken on this. I think you can quantify development applications. I know of subdivisions in my area that actually are on one big, giant well. It's an underground lake, underneath the subdivision. Maybe visually we don't see water that way, but that's apparently what it is: a huge underground lake that they're feeding water from. It should be safe and clean and they should have some idea of how to measure it, and I'm sure they do, through seismographic studies and other kinds of things.

We're only saying here in the argument, and why we're taking so much time on this, is that in this section you are measuring it. You're using smart meters like you're doing electricity that way. Do you understand? They're modelling it and they are going to charge for it.

You're going to end up with like the York-Durham pipe; there's a huge problem there of all the water draining out of the system. I'm sure you're following that one: a huge issue.

I would suspect that when there's a development application, you're going to say, "You're going to pay so much for some kind of charge to make sure we can transfer water from Lake Simcoe," or someplace, and that's what you're going to be doing. That's all I'm saying. So you are not using the old, prehistoric little water meters. But you are measuring it and we're going to pay for it and it's going to get more expensive for sure, that's all, and agriculture will pay by the number of livestock units and their nutrient management plan.

I'm fairly accurate, fairly comfortable and fairly confident in what I say. I dislike someone presuming that I'm not, because I am.

1520

Mr. Wilkinson: I say to Mr. O'Toole that it's interesting that you've changed your position from the beginning.

Mr. O'Toole: You're reading the notes quite well that they've given you to read.

Mr. Wilkinson: I notice you've changed your position from when you started, because you didn't say again the canard that you had at the beginning of your long tirade about the metering of private wells. So I'm glad you acknowledge that and that there is science and there is modelling.

As to your assertion that there would be some types of charges to agriculture, thanks for making the case for exactly why, with an attitude like that, the good farmers of Ontario shouldn't vote your party back into office.

The Chair: Thank you. May I now call for the vote on government motion 48?

Interjections.

The Chair: Recorded vote.

Mr. Tabuns: I have to make one comment, please.

The Chair: Mr. Tabuns, please go ahead.

Mr. Tabuns: I'd just note that it was pointed out by the parliamentary assistant that in (g), the term that is used is "drinking water threats," both in (i) and (ii), but when we go to (h), it's "significant drinking water threat" that is the operative and ultimately determinant phrase. I think we can't get away from this. We have an undefined term that actually is going to determine how action is taken, and I think that's highly problematic for this bill. Thus, I will not be supporting this amendment.

The Chair: Thank you. If there are no further comments, we'll proceed to the vote on government motion 48.

Ayes

Flynn, Leal, Wilkinson, Wynne.

Nays

O'Toole, Scott, Tabuns.

The Chair: Carried.

NDP motion 49.

Mr. Tabuns: I move that section 13 of the bill be amended by adding the following subsection:

"Climate change

"(2.1) In preparing the assessment report, the source protection committee shall consider the effects of climate change."

Water systems are dynamic. They are affected by climatic conditions. We in Ontario will see substantial changes in our operating environment over the next few decades. We will see drought in some areas, floods in others, and in some instances combinations of both at different points in the year. Our systems of water provision will be strained and challenged in ways that we have to prepare for now. The reality is that we will be setting in motion investments, changing land use planning and putting in place infrastructure that will have to deal with conditions as they are today but also conditions that will be here over the next 30, 40 and 50 years. Frankly, if a source protection committee is going to do an adequate job, it has to assume that conditions over the next few decades could be very different from the ones we are facing now. If we want to protect water resources, we have to incorporate that into our planning and acting at this stage. I would urge that this amendment be adopted by the government so that its plans reflect those changes that are coming down the pipe, as it were.

The Chair: Thank you. Further comments?

Mr. Wilkinson: I believe the director's rules that will be contained under section 98 are the best way of addressing the concerns raised by the member.

The Chair: Thank you. Any further comments?

Mr. Tabuns: If I'm correct, section 98 refers to regulation.

Mr. Wilkinson: Absolutely.

Mr. Tabuns: I think it needs to be recognized in law, not in regulation. We are looking at a significant disruption of our environment, of our local ecology. I believe the concerns that have been evinced by the parliamentary assistant about potential changes in government in the future should never be set aside. Frankly, we should be embodying this in the legislation so that action on climate change has as much protection as we can give it and it is not put into the regulations section, where the cabinet in two or three years, with a government that may not be as friendly to these issues, could simply dispense with it.

The Chair: Thank you, Mr. Tabuns. Any further comments?

Mr. Tabuns: Recorded vote; that's it.

Ayes

Tabuns.

Nays

Flynn, Leal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 50.

Mr. Wilkinson: I move that section 13 of the bill be amended by adding the following subsection:

“Identification of drinking water threats

“(2.1) Clauses 2(g) and (h) do not apply to a vulnerable area in the circumstances prescribed by the regulations.”

By way of explanation, I can say that this motion is made to provide that the requirement to identify activities and conditions that are drinking water threats in areas where they are or would be significant drinking water threats does not apply to vulnerable areas in prescribed circumstances. Therefore, in circumstances set out in the regulations, it would not be necessary to identify significant drinking water threats in some vulnerable areas.

It particularly addresses agriculture and industry concerns by focusing and prioritizing work in areas of high risk. It clarifies that this is not a bill intended to establish wellhead protection areas around domestic wells. Again, it goes back to the issue of clarity as to what this bill does protect and what it doesn't propose to protect.

The Chair: Comments?

Mr. Tabuns: A simple comment: Once again, we're being asked to vote in favour of something where the text is not available to us, so we can't decide whether we're for or against it. It's the pig-in-the-poke problem.

Mr. Wilkinson: Well, we're either for the framework or we're not.

Mr. Tabuns: “Framework” left undefined means that we as legislators are just simply saying, “You fix it,” without giving you direction. I don't think that's a reasonable way to run government, and it's certainly not a way for us to be held accountable, because I can always say, “I voted in favour of the framework. Yes, they put in something that makes all of us crazy but, in fact, we trusted them.” I don't think it's reasonable, John, and if you were on this side of the table, I think you'd be taking the same position as me.

Mr. Wilkinson: As someone who actually sits in government, the idea that this place can micromanage every detail is beyond me. Prescribing everything in legislation so that any time we decide from a common-sense point of view that it's wrong, it requires us to get back into the legislative calendar to fix it, is wrong. There is always a balance. We may disagree, but in principle there always is a balance between legislation and regulation. There has to be.

It has taken years and years just to get to this point, I say to my friend. So again, we need to be in a position where we're getting on with it. There is a tremendous amount of work being done by so many people who are waiting to see and receive a signal as to whether or not we're moving forward with this legislation. I think the time has come for action. We can endlessly debate this and endlessly have this go around and around. There are some things that should be developed by regulation.

Mr. Tabuns: I won't argue that there shouldn't be some things developed by regulation. In fact, I think you're right. There is a question of balance. But when

you leave out substantial definitions, that's problematic. I can see where you would want to have regulation for smaller items, but when you're talking about definitions and you're continually, in the course of this bill, not defining items or having us adopt sections where large chunks are undefined, that's problematic. It means that you can't be held accountable and I can't be held accountable. I think that's wrong in a democracy.

The Chair: Thank you, Mr. Tabuns. We'll proceed now to the vote on government motion 50.

Mr. Tabuns: Recorded.

Ayes

Flynn, Leal, Wilkinson, Wynne.

Nays

Tabuns.

The Chair: Carried. Shall section 13, as amended, carry? Carried.

Section 14: NDP motion 51.

Mr. Tabuns: I move that section 14 of the bill be amended by striking out “and” at the end of clause (a) and by adding the following clauses:

“(c) publish the proposed assessment report on the Internet and in such other manner as the source protection committee considers appropriate;

“(d) give notice of the proposed assessment report in accordance with the regulations to all persons who made oral or written representations to the source protection committee on the assessment report, and to the persons prescribed by the regulations, together with information on how copies of the assessment report may be obtained and an invitation to submit written comments to the source protection authority within the time period prescribed by the regulations; and

“(e) publish notice of the proposed assessment report in all local newspapers in the source protection area, together with information on how members of the public may obtain copies of the assessment report and an invitation to the public to submit written comments to the source protection authority within the time period prescribed by the regulations.”

I note that the government has cribbed my notes and given a Reader's Digest version in the next amendment. However, I think mine is the better amendment and urge all present to vote in favour of it.

1530

The Chair: Thank you, Mr. Tabuns. We'll proceed to the vote unless there are any further comments.

Mr. Tabuns: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 51.1.

Mr. Wilkinson: I move that section 14 of the bill be amended by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding the following clause:

“(c) publish the proposed assessment report on the Internet and in such other manner as the source protection committee considers appropriate, together with an invitation to submit written comments to the source protection authority within the time period prescribed by the regulations.”

It goes to the same issue. We agree with the NDP in regard to the issue of transparency, but what other means beyond the Internet should be used should be determined by the local people and not by fiat from 135 St. Clair West.

The Chair: Comments?

Mr. Leal: Recorded vote.

The Chair: Recorded vote, to which we will proceed.

Ayes

Flynn, Leal, O'Toole, Scott, Tabuns, Wilkinson, Wynne.

The Chair: Carried.

Shall section 14, as amended, carry? Carried.

New section 14.1: PC motion 52.

Ms. Scott: I move that the bill be amended by adding the following section:

“Environmental Review Tribunal

“14.1(1) The Environmental Review Tribunal shall convene for the purpose of conducting one or more hearings within the source protection area or in the general proximity of that area for the purpose of receiving representations respecting the proposed assessment report, or any matter relating to the proposed assessment report.

“Duty of tribunal

“(2) The tribunal shall fix the time and date for the hearing and shall require that notice, as it specifies, be given to landowners in the source protection area, to other interested persons and to persons and bodies prescribed by regulation.

“Parties

“(3) The source protection authority, any landowner and any other person or body who responds to the notice and any other person specified by the tribunal shall be parties to the hearing.

“Decision

“(4) The tribunal shall serve notice of its decision, together with the reasons for it, on the parties to the hearing and the director and the director shall require that the assessment report be amended to reflect the tribunal's decision.

“Appeals from tribunal decision

“(5) A party to a hearing may appeal from the tribunal's decision on a question of law to the Divisional Court.”

We heard the recommendations for this throughout. There needs to be more of a robust appeals process for those impacted by the bill. This is trying to get away from the government's punitive approach that it has taken with this bill so that those accused have any and all reasonable means to ensure that these actions are fair and just.

The Chair: Thank you. Any further comments on PC motion 52?

Mr. Wilkinson: On behalf of the government, we won't be supporting this because we feel that in the question of the assessment report, an adversarial hearing based on competing scientists is not the way to engender the type of collegial work that we need to be happening at the local level. There is due process, there are appeals, but in the question here what I foresee is an attempt to completely hamstring this process and have it diverted into years and years of contentious litigation rather than focusing on what people have told us and what Justice O'Connor told us to do, which is to get the people who are sharing the common source of drinking water around the table and let them sort it out.

To me, there is plenty of due process in this. But to start this whole thing by having duelling lawyers is not going to get us to where we want to be, which is protecting our sources of drinking water.

Ms. Scott: The reason for the amendment and its purpose is, the way the government approached it initially is going to be confrontational. With this in place, we hope there aren't as many confrontations, so if there is a more explicit due process, as you inferred that the other will be due process—a lot of our stakeholders don't feel that way, and thus the amendment has been brought forward.

Mr. Wilkinson: I was wondering if you talked to the stakeholders after we put in our package, where we have the OFA and OFEC, Conservation Ontario and the Association of Municipalities of Ontario, who have all decided that, given the amendments that they asked for and that we're providing, their anxiety has gone down substantially. I think it has engendered the goodwill required to allow for implementation to happen. In the absence of those government amendments, I could see the point that you're trying to raise. But I think that a lot of those fears have been put down, despite those who want to create fears.

Again, I point to the minister coming and putting in the stewardship fund. I think all of those things, as a package, have allowed us to take the right approach. For this to work, we need people to come around the table and work together. If the first opportunity, which is presented in this amendment, is, “Well, just go to court,” this whole thing is just going to be gridlocked in no time. I can think of many lawyers who will be lining up to get to this work.

That doesn't mean that we don't have to have appeals and there won't be lawyers, but here we are looking at the whole question of the assessment report. The issue is how it impacts people ultimately. So I believe that the

appropriate way to do it is the way that we've proposed in our bill. I think the fear has been greatly reduced by the package the government has put into this bill in regard to amendments.

Ms. Scott: I'd like to thank the member and acknowledge that, yes, there were a lot of amendments to correct the bill; some have been rectified in some of the government amendments. I guess we'll wait to see when we go through the 226 or 230 amendments we have.

Mr. Wilkinson: They're not all ours.

Ms. Scott: No, they're not.

The Chair: Thank you. We'll proceed now to the consideration of PC motion 52. Shall section 14.1, referring to PC motion 52, carry? Those in favour? Those opposed? Defeated.

NDP motion 53.

Mr. Tabuns: I move that subsection 15(1) of the bill be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

"(c) any written comments received by the source protection authority after publication of the assessment report under clause 14(c)."

Again, followed by a government motion that I don't think is as good as mine, I'd urge you all to vote for my amendment.

The Chair: Thank you, Mr. Tabuns. Any comments?

Mr. Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 53.1.

Mr. Wilkinson: I move that subsection 15(1) of the bill be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

"(c) any written comments received by the source protection authority, within the time period prescribed by the regulations, after publication of the proposed assessment report under clause 14(c)."

It's for the same reason, as to why we feel that this is the best way to ensure transparency.

The Chair: Further comments on government motion 53.1? Seeing none, we'll proceed to the vote.

Mr. Wilkinson: Recorded vote.

Ayes

Flynn, Ramal, Tabuns, Wilkinson, Wynne.

Nays

O'Toole, Scott.

The Chair: Carried.

Shall section 15, as amended, carry? Carried.

Section 15.1, new section, NDP motion 54.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"Publication of decision

"15.1 As soon as reasonably possible after an assessment report is approved by the director, the director shall publish notice of the approval on the environmental registry established under the Environmental Bill of Rights, 1993, together with,

"(a) a brief explanation of the effect, if any, of any comments and other material submitted under subsection 15(1) on the director's decision; and

"(b) any other information that the director considers appropriate."

Again, it's part of the exercise of making this bill more accessible, more open and more transparent.

The Chair: Thank you, Mr. Tabuns. Mr. O'Toole.

Mr. O'Toole: I'm seeing a little bit of a pattern developing here. It would appear that the government, rather than voting even tokenistically with one opposition—NDP or Conservative—motion or amendment, has reviewed them and redrafted them, almost identically, so that they couldn't or wouldn't support any opposition motions here. It's such trivial abuse. It's tragic that that's the way it's working. I'll be supporting Mr. Tabuns's motion, knowing that they came up with the idea and the government's just copying them and submitting their own, which just shows the willingness to co-operate here is at a low point.

1540

The Chair: Mr. Ramal.

Mr. Khalil Ramal (London-Fanshawe): Thank you, Mr. Chair. Mr. O'Toole has inspired me to speak this afternoon. I don't know why he talks in the committee as if we are here making a deal, a trade-off. He forgot about the direction of the government to ensure all the people of Ontario have clean and safe water. It's not about, "Give me one; I'll give you another one." So the issue is about philosophy and direction. That's why we're honoured and privileged to be part of a government that looks after the people of Ontario.

The Chair: Thank you, Dr. Ramal. Any further comments?

Mr. Wilkinson: Mr. Chair, just for the record, we applaud the amendments that were put forward by the NDP, but upon reflection we have to make sure that they fit in with all of the amendments. It's always to the government to carry it so that these bills are drafted in a consistent fashion.

I think it's time to vote yet again.

The Chair: Agreed. All those in favour of NDP motion 54? Shall section 15.1 carry?

Interjection: Recorded vote.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 54.1.

Mr. Wilkinson: Well, Mr. Chair, to no one's surprise, I move that the bill be amended by adding the following section:

"Publication of approval

"15.1 As soon as reasonably possible after an assessment report is approved by the director, the director shall publish notice of the approval on the environmental registry established under the Environmental Bill of Rights, 1993, together with,

"(a) a brief explanation of the effect, if any, of the comments and other material submitted under subsection 15(1) on the director's decision; and

"(b) any other information that the director considers appropriate."

The Chair: Thank you, Mr. Wilkinson. Any further comments? Proceeding directly to the vote—

Mr. Wilkinson: Recorded vote.

The Chair: Recorded.

Ayes

Flynn, O'Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed. Carried.

New section 15.2: NDP motion 55.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"Deadline for assessment report

"15.1 The minister shall take such steps as are necessary to ensure that the director approves the assessment report under section 15 not later than 12 months after the source protection committee is established under section 7."

Again, it's a question of establishing timelines so this process moves forward. Certainly, in discussing an earlier opposition motion, the parliamentary assistant expressed his concern about things being tangled and tied up forever, so I would hope that, keeping those words in mind, he will open his heart and mind to this particular amendment and support it.

Mr. Wilkinson: My natural inclination to agree with my friend is tempered by the fact that I am actually on the government side of the House and perhaps—well, it's not that it's my first wish, but perhaps one day you'll have that opportunity, I say to my friend. What you would see, when you look at the vast quantities of work that have to be done by the ministry, is that it is far better for the ministry to be able to give advice to the minister as to what are the appropriate timelines. We are trying to do something right across this province in 19 different source protection authorities plus other areas that may be included, and for the efficient running of government it is

important for us to be able to control those timelines. I understand some anxiety, but I can assure you on behalf of our government that we will be moving expeditiously with getting the bill through and implemented. I think we've gone a long way in making sure that the bill does get implemented and doesn't become a question of litigation, as suggested by the opposition.

Mr. Tabuns: Based on that argument, I'd urge you strongly to support this amendment.

The Chair: Thank you. We'll proceed to the vote on NDP motion 55. Shall section 15.2 carry?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

No amendments having been received for section 16, we'll vote directly. Shall section 16 carry? Carried.

NDP motion 56.

Mr. Tabuns: I move that section 17 of the bill be amended by striking out "available to the public" and substituting "available to the public on the Internet and in such other manner as the source protection authority considers appropriate."

Again, it's my ongoing concern that this bill be operated, implemented in a way that's fully accessible, transparent to the public. I see in 56.1 that I have inspired action on the part of the government.

The Chair: Thank you, Mr. Tabuns. Further comments?

Mr. Wilkinson: Mr. Chairman, I think there could be inspiration breaking out in the House, as we say. You know, you've inspired us to actually, in our amendment, add "as soon as reasonably possible," so I think it might actually be a stronger amendment. But we appreciate the thought and have taken it into consideration.

Mr. Tabuns: I'd be happy to add that.

Mr. Wilkinson: Well, if you'd be prepared to add that, we'd be more than happy.

Mr. Tabuns: Okay. I will reread: I move that section 17 of the bill be amended by striking out "available to the public" and substituting "available to the public as soon as reasonably possible on the Internet and in such other manner as the source protection authority considers appropriate."

The Chair: At this time we're voting on the amendment to the amendment, so we'll open that for the floor. We'll proceed directly to the vote. Mr. O'Toole?

Mr. O'Toole: This is an amendment to the amendment. This is another case where I think the NDP have done a good job in terms of bringing some of these amendments forward and the government has done a good job of copying or imitating them. In fact, it shows

the haste and ill-conceived process that this bill has gone through. Now we're dealing with amendments to the amendments; they're being walked on and walked off. This bill is so serious and so important. I wish the government would have taken the time to draft it correctly and consulted thoroughly, as opposed to this charade that's going on here this afternoon and tomorrow. I'm very surprised.

The Chair: Thank you, Mr. O'Toole. Shall we vote on the amendment to the amendment?

Mr. Wilkinson: Just after I put on the record that I couldn't disagree more with the member for Durham.

The Chair: Thank you. We'll now proceed to the vote on the amendment to the amendment. Those in favour? Those opposed? Carried.

May we now proceed to the vote on the amendment, as amended, NDP motion 56.

Mr. Tabuns: Recorded.

The Chair: Recorded vote.

Ayes

Flynn, O'Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed. Carried.

Mr. Wilkinson: On behalf of the government I withdraw government amendment 56.1.

The Chair: Thank you, Mr. Wilkinson.
NDP motion 57.

Mr. Tabuns: I move that subsection 18(1) of the bill be amended by striking out—

Mr. Wilkinson: Point of order.

The Chair: Point of order, Mr. Wilkinson.

Mr. Wilkinson: I believe we need to vote now on section 17, Chair.

The Chair: Shall section 17, as amended, carry? Carried.

Proceed, Mr. Tabuns. NDP motion 57.

Mr. Tabuns: I move that subsection 18(1) of the bill be amended by striking out "significant drinking water threats" wherever it appears and substituting in each case "drinking water threats."

We've had this debate through the day. "Significant drinking water threats" is not defined. I have put forward a motion regarding drinking water threats themselves. I think that for us to actually do our work as legislators we should be using terms that are defined and not simply leaving definition later to regulation. Beyond that, by using the word "significant," one has to ask, "So how protective is that and where will that threshold be set?" I think it's clearer and cleaner to use the definition that I put forward and to adopt this amendment.

1550

The Chair: Thank you, Mr. Tabuns. Any further comments? We now move to consideration of NDP motion 57.

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Ramal, Wilkinson, Wynne.

The Chair: Defeated.
NDP motion 58.

Mr. Tabuns: I move that subsection 18(3) of the bill be amended by striking out "available to the public" and substituting "available to the public as soon as reasonably possible."

Given a recent suggestion of amendment by the government ranks there, I would think that they would be very open to that wording.

The Chair: Any further comments on NDP motion 58?

Mr. Wilkinson: Actually, Mr. Chair, I know that the government plans to table a motion shortly that will deal with this issue, and as a result we will be voting against it.

The Chair: We'll proceed with the vote. Those in favour of NDP motion 58?

Mr. Tabuns: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Ramal, Wilkinson, Wynne.

The Chair: Defeated.
Government motion 59.

Mr. Wilkinson: Mr. Chairman, I respectfully withdraw government motion 59. We have provided a replacement motion which is known as motion number 59.1.

The Chair: Proceed.

Mr. Wilkinson: Thank you. I move that subsections 18(1), (2) and (3) of the bill be struck out and the following substituted:

"Interim progress reports

"18(1) If the director has approved an assessment report, the source protection authority shall prepare and submit reports to the director in accordance with this section, at intervals specified under clause (2)(a), that,

"(a) with respect to each activity specified under clause (2)(b), describe the measures that have been taken to reduce the potential for the activity to adversely affect the raw water supplies of drinking-water systems specified in clause 13(2)(e);

"(b) with respect to each condition specified under clause (2)(c), describe the measures that have been taken to reduce the potential for the condition to adversely affect the raw water supplies of drinking-water systems specified in clause 13(2)(e); and

“(c) contain such other information as is specified under clause (2)(d).

“Same

“(2) When the director approves the assessment report, the director may, in writing,

“(a) direct that reports be submitted under this section at intervals specified in the direction;

“(b) specify, for the purpose of clause (1)(a), one or more activities that are listed in the assessment report and for which the assessment report identifies one or more areas where the specified activity is or would be a significant drinking water threat;

“(c) specify, for the purpose of clause (1)(b), one or more conditions that are listed in the assessment report and for which the assessment report identifies one or more areas where the specified condition is a significant drinking water threat; and

“(d) specify other information for the purpose of clause (1)(c).

“Available to public

“(3) Subject to subsection (3.1), the source protection authority shall ensure that the reports are available to the public as soon as reasonably possible after they are submitted to the director.

“No personal information

“(3.1) When a report is made available to the public under subsection (3), the source protection authority shall ensure that it does not contain any personal information that is maintained for the purpose of creating a record that is not available to the public.”

We offer this amendment for clarity and to make sure that it lines up with previous and planned motions of the government.

The Chair: Thank you. Further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 59.1? Those opposed? Any opposed to government motion 59.1? Carried.

PC has the floor if they'd like to notify us of their notice on motion 60.

Shall section 18 carry, as amended?

Ms. Scott: Wait a minute, wait a minute. Just to clarify a little bit of the—

Ms. Wynne: He asks and then you vote against it.

Ms. Scott: Yes. Thank you. We just want to say the Progressive Conservative Party recommends voting against section 18 of the bill. I know there have just been some amendments brought forward, but it's going back to the due process that the government has not been taking with respect to the assessment report, with respect to landowners who are impacted by this.

Also, it contradicts recommendation 14 of the Walkerton inquiry, part two, where it stated that the water protection plan prepared at the individual property level be consistent with the source protection plan for the watershed in which the property is located.

It's for those reasons, in trying to digest the amendments which have just gone through from the government, we vote against section 18.

The Chair: Thank you, Ms. Scott.

Shall section 18, as amended, carry? Those in favour? Opposed? Section 18, as amended, carries.

Section 19: NDP motion 61.

Mr. Tabuns: I move that section 19 of the bill be amended by adding the following subsection:

“Precautionary principle

“(1.1) In preparing a source protection plan, the source protection committee shall apply the precautionary principle.”

I understand the government's position has been that this act is inherently precautionary and so their actions will be precautionary. I'm suggesting they need to provide instruction to source protection committees that they themselves shall apply the precautionary principle so there's no question of how they are meant to approach the question.

Mr. Wilkinson: That is exactly what will happen when we give directions by the director and with our regulations.

Mr. Tabuns: So in fact we can expect that when the regulations come forward, the source protection committees will be told that they have to apply the precautionary principle?

Mr. Wilkinson: What I can tell my friend is that the precautionary principle would also be reflected in the director's rules and any Lieutenant Governor in Council regulations governing how assessment reports are prepared and risk assessments are carried out. We believe that that will ensure the common goal that we've discussed and ensure that we're going to get the desired result that we want and not actually have this bill hamstrung to the point where we would have difficulty making sure it's implemented. So in our considered opinion, we believe that is the appropriate way to make sure the precaution that Justice O'Connor talked about actually becomes a reality and not a litigious football ad infinitum.

Mr. Tabuns: So you won't be using the words “precautionary principle” when you write the regulations and give instructions?

Mr. Wilkinson: Well, there's a difference between using, as we've discussed, the precautionary principle in legislation and in regulation. I'm sure that our regulations will be well considered.

Mr. Tabuns: My comment stands.

The Chair: Mr. O'Toole.

Mr. O'Toole: I would ask one of the staff people to give us a written explanation of what their interpretation of the precautionary principle is, and/or you can do that verbally here today. I personally feel that I'd like to hear it and have it expressed on the record here by a person who's trained in the area.

Mr. Wilkinson: For those of us who were out on committee for the entire five days, I believe that actually we did have deputations on this and some clarity that was provided by research in regard to the precautionary principle, if I recall. I would never have known about Bergen, Norway, if they hadn't.

Mr. O'Toole: I didn't attend every day of the hearings, and I don't think the Hansard record—I would

like, for the record, what the ministry considers it to be, because I'm of the understanding now that it's going to be implicit in the regulations. So it would be nice to know what the guidelines are going into that process. Is it past, present and future considerations of risk or—the only way not to make a mistake is, don't do anything.

Mr. Wilkinson: Perhaps you weren't here on the first day. I know that my minister took time out of her very busy schedule to address this committee at the beginning of the hearings and stated on the record that we believe that the bill is inherently precautionary. So one can be assured that it's the intention of the government to be precautionary in the bill and in everything that would flow out of this bill in regard to regulation.

Mr. O'Toole: All I'm asking for, Chair, through you, is a copy of what the ministry states as the precautionary principle in its theoretical definition. It should be fairly easy. Thank you.

The Chair: Thank you, Mr. O'Toole. We'll proceed now to the vote on NDP motion 61.

Interjection: Recorded.

The Chair: Recorded.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 62.

Mr. Tabuns: I move that paragraph 2 of subsection 19(2) of the bill be struck out and the following substituted:

"2. Policies, including specific measures, that are intended to achieve the following objectives:

"i. Ensuring that every existing activity that is a drinking water threat ceases to be a drinking water threat.

"ii. Ensuring that no possible future activity that would be a drinking water threat ever becomes a drinking water threat."

1600

Again, it's the whole question of the use of the term "significant"—an undefined term that would make for a less rigorous threshold for taking action. So I'm moving that we go to a term that's already defined in legislation and that will give us more rigorous protection.

Mr. Wilkinson: Given the comments of Justice O'Connor and his inspiration, for us to bring in a comprehensive amendment that deals with every drinking water threat, that "every" word would have to be defined by somebody. "Every" is every, and as a result, I don't think we'd ever be able to look at what Justice O'Connor told us to do, which is that you go with the "significant" first. That's what you have to do. So you have to assess what is significant, what is medium and what is a low risk. This bill is all about making sure that if there is a significant risk, it cease to be significant.

If instead we go down the path of looking at all risks everywhere all the time, we will never be able to marshal our resources to where the greatest danger to the common good is. So I think Justice O'Connor looked at that very issue and wrote in his report that if government is to take action, it must be based on the principle of assessing a risk. One can make tremendous arguments that there is risk to everything. The question is, how do we get to "significant risk"?

Mr. Tabuns: Given that "significant risk" is still undefined, if there had been a definition, perhaps this discussion would not be taking place, but in fact it isn't defined.

Mr. Wilkinson: But I know exactly what "every" means, and what you're saying is "every." I know what that is. I don't need a definition to know that from your position it should be "all." I say with respect that, in the practicality of having a bill that needs to be implemented so that we have something where we can look back and say that we actually did something, we can't be caught up in the question of trying to do "all" all at once. So we have to go to "significant."

Mr. Tabuns: Again I'd say that if you'd defined it, then we might not be having this debate.

Mr. Wilkinson: And the people who are drinking that water are going to help us define what is "significant," because they're entitled to be heard in this discussion.

Mr. Tabuns: No. You will define it and you'll set it out in regulation. They will get to send you an e-mail or a letter, but cabinet will define it, not the Legislature.

Mr. Wilkinson: The source planning committee will define it.

Mr. Tabuns: So "significant" will be defined by the source planning committee and not in regulation?

Mr. Wilkinson: "Significant" will be defined in regulation—

Mr. Tabuns: Right. That's what I said.

Mr. Wilkinson: —but the question of prioritizing work will be defined by the source protection committee.

Mr. Tabuns: I'm sure.

Mr. Wilkinson: All the ministry will do is make sure that there's a coordination so that, as we heard from so many areas where we have a source planning authority which has—I give you the example of the city of Ottawa, which is a municipality surrounded by I think three different watersheds—that level of coordination, we don't have people running around, reinventing the wheel.

Mr. Tabuns: You're still going to define it, but not in time for us to vote on it.

The Chair: This will be our final vote of this day. We will now proceed to the vote on NDP motion 62.

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Ms. Wynne: Are you finished with the business? Okay. I just wanted to clarify, Mr. Chair: We've gone through 63 motions. We have to get through 226. My understanding is that there is an agreement that we would go tomorrow from 10 until 4 as well and we would complete those motions. Is that the situation?

The Chair: That is our understanding.

Ms. Wynne: Okay. Thank you.

The Chair: The clerk advises me that there is no agreement to complete, although we were advised differently earlier.

Ms. Wynne: We've been told that there was.

Mr. O'Toole: I had asked earlier the clerk of the committee to get the subcommittee report. This is not time-allocated, and as such we've been allocated two days, 10 to 4, and probably will not complete it, given the fact that it's a very technical bill with a lot of amendments. Basically, the bill is completely changed from many of the public hearings. We'll have to see about that tomorrow. So it's not time-allocated.

Ms. Wynne: No. I understand it's not time-allocated. That's why I was just clarifying that the arrangement was, though, that there would be two days of hearings and we would complete.

Mr. O'Toole: It doesn't mean it'll be complete.

Mr. Wilkinson: The committee is to report back to the House.

The Clerk of the Committee: The committee has been given two days in which to look at clause-by-clause. The times that the committee meets are set by the committee and therefore can be changed by the committee. Unless the whips' agreement was amended, we still only have two days. If we're not finished, we'll continue when the House returns, on our regular scheduled time.

Ms. Wynne: But the whips' agreement was two days.

The Clerk of the Committee: Two days of clause-by-clause is what we were given over the recess.

Ms. Wynne: Thank you.

The Chair: Thank you. This committee stands adjourned till 10 a.m. tomorrow.

The committee adjourned at 1606.

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Tuesday 12 September 2006

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Mardi 12 septembre 2006

**Standing committee on
social policy**

Clean Water Act, 2006

**Comité permanent de
la politique sociale**

Loi de 2006 sur l'eau saine

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 12 September 2006

Mardi 12 septembre 2006

The committee met at 1000 in committee room 1.

CLEAN WATER ACT, 2006

LOI DE 2006 SUR L'EAU SAINE

Consideration of Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts /
Projet de loi 43, Loi visant à protéger les sources existantes et futures d'eau potable et à apporter des modifications complémentaires et autres à d'autres lois.

The Vice-Chair (Mr. Khalil Ramal): Good morning, ladies and gentlemen. Welcome to the second day of clause-by-clause on Bill 43, the Clean Water Act. We'll start with the first motion, NDP motion 63. Mr. Tabuns, you can start.

Mr. Peter Tabuns (Toronto–Danforth): Thank you, Mr. Chair. Good morning, colleagues.

I move that subsection 19(2) of the bill be amended by adding the following paragraph:

"2.1 Policies to address the adverse effects of climate change on existing and future sources of drinking water."

Mr. Chair, please correct me if I'm wrong here, but I thought we had actually gotten to this yesterday. I would be happy to re-debate the amendment, because I thought it was a wonderful amendment.

Interjection.

Mr. Tabuns: I'll wait for the official checking of the record.

Interjection.

Mr. Tabuns: We are at 63? Okay. I've read it out. I'll just note that I think we are facing substantial turbulence in terms of water supply and quality with climate change. Plans that don't recognize the changing circumstances that we'll face will be inadequate and will put public health at risk, because there will be times when there will be shortages of water and there will be times when surpluses of water will lead to contamination—surplus being a flood. Everyone around this table recognizes that climate change is happening. It makes complete sense to give source protection committees and source protection authorities direction from the beginning to address climate change in their planning, to understand what's coming and to make sure that they are doing the due diligence necessary to protect human health and the environment over the long term. I don't think this policy, in fact, is contrary to government direction or stated gov-

ernment direction. I see every reason why you would support it.

The Chair (Mr. Shafiq Qaadri): Further comments?

Mr. John Wilkinson (Perth–Middlesex): This bill is a framework piece of legislation, and within that framework we give a great deal of latitude for all issues that can result in a significant threat to drinking water primarily but also any threat to drinking water when it comes to the questions of quantity and quality. We believe that we've crafted a bill that is robust enough. One of the aspects that undoubtedly—and I agree with my friend—will have, and has even today, an impact on water and drinking water is the issue of climate change, but we believe that the bill, as drafted, is the appropriate way to make sure that all things are considered.

Mr. Tabuns: I've heard and understood the argument about the framework, and I would say that this is a framework piece. We're not telling them what their policy should be; we're not telling them how to write their plan. We're saying that in the process of defining the problem, this element has to be taken into account; simple as that. If you're talking framework, I'm saying this is a framework piece, and I think that's a reasonable argument.

The Chair: Any further questions or comments? Seeing none, we'll proceed to the vote.

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We'll proceed now to NDP motion 64.

Mr. Tabuns: I move that subsection 19(2) of the bill be amended by adding the following paragraph:

"2.2 Policies relating to water conservation."

I found it interesting that agricultural groups raised this issue pretty consistently in the hearings. They correctly understood that a reduction in demand on ground-water and surface water would reduce the overall impact of the human footprint on the environment and reduce the chances of contamination. This bill is meant to protect

both quantity and quality of water. Again, then, in preparing these plans, it makes sense to give direction to source protection committees and source protection authorities to include consideration for water conservation in their plans. I don't quite see how you can protect the environment without reducing our drawdown on the resources in that environment.

So, again, as you've said, Mr. Wilkinson, if we are going to be talking about framework, this is a piece of the framework, saying, "Here is an element that you have to take into consideration." It could have been three pages long, detailing how they conserve water, but it simply says, "When you're doing that plan, you have to have policies relating to water conservation." I don't see any reason that you'd oppose this amendment.

Mr. Wilkinson: I believe the bill, as drafted in this regard, where there is a requirement in the assessment report that there is a water budget—which I think is quite progressive of the government to put that in there—I believe we're in a position where inherently the bill, as already approved in previous sections, deals with the whole question of a water budget.

I know my friend understands that across Ontario there are some regions where water is more plentiful. When we were in Norfolk, we listened to the Norfolk Federation of Agriculture. They're on the sandy plain. They talked at great length about the co-operative efforts that they use to conserve water because they are heavily dependent on irrigation in an area that is not blessed with great quantities of water. So when we have the province the way it is, I think the appropriate way to deal with this first is to do what we have done, which is enshrine in the framework that a water budget has to be part of it.

Again, I believe that the source planning committees, which are from the ground up, as a community, will reach these conclusions, though the minister has the regulatory authority to deal with anything she would consider a deficiency. When you're trying to empower people—we want those source planning committees themselves to determine from the input from their own communities those things which are of the greatest priority, water conservation being one of them, because it'll be inspired by the science telling us what the water budget is for the watershed in question.

Mr. Tabuns: I'm listening to what you're saying, and yes, science can tell us what the water budget is, but on principle, we should be reducing our drawdown on our water resources. We should use less. We should use the absolute minimum that's consistent with good health, comfort and enjoyment. It makes total sense for us to say not solely that you should have a budget, but you should have a budget that conserves the resource. So I don't see a contradiction between what I'm saying here and the water budget. I'm saying, "You want to have a budget? Good. We suggest you make it a budget that is as economical of the resource as possible."

Mr. Wilkinson: And the question here is that we believe that the appropriate place for that to be developed and for that consensus to be built upon is, first, at the

local level; this bill is all about local empowerment first. Though the minister has the ability to look at that and impose conditions, let's first let the community come together and make that decision, as opposed to all the work being done in Toronto. It's just a difference of philosophy. I think we're going to get to the same point.

Again, my fear is not doing this; it's how it's implemented. It has to have credibility with the people who are affected. They, neighbour to neighbour, have to reach the consensus that conservation is of paramount importance, and I want them to have the opportunity first, before the government starts prescribing these things.

Mr. Tabuns: And that's what they were asking for in our hearings.

Mr. Wilkinson: In one part of Ontario.

Mr. Tabuns: I think that came up in a variety of hearings, but we may well have gone over this ground as much as we're going to go over it productively.

The Chair: Are there any further questions and comments on NDP motion 64? Seeing none, we'll proceed to the vote.

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

I'd just inform members of the committee that government motion 65, which of course sequentially is next, is going to be deferred until after consideration of PC motion 73.1 for rules that are too intricate at this early juncture to share with you. Nevertheless, we now proceed to NDP motion 66.

1010

Interjections.

The Chair: NDP motion 66.

Mr. Tabuns: I move that section 19 of the bill be amended by adding the following subsection:

"Other drinking water threats

"(2.1) A source protection plan may, in accordance with the regulations and the terms of reference, set out policies intended to address activities and conditions that are identified in the assessment report as drinking water threats but are not identified as significant drinking water threats."

Based on a precautionary approach to dealing with potential water contamination, based on the fact that we don't have a definition of "significant drinking water threats," we're proposing that source protection committees have this direction.

The Chair: Comments?

Mr. Wilkinson: I think when we deal with government motion 65 in regard to an amendment to subsection 19(2.4) we'll address this issue at that time.

The Chair: If members are ready to vote, we'll proceed.

Mr. Tabuns: Recorded, please.

The Chair: Recorded vote, NDP motion 66.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 67.

Mr. Tabuns: I move that clause 19(3)(b) of the bill be struck out and the following substituted:

"(b) a possible future activity that would be a drinking water threat."

Going back to my previous commentary, this is changing the threshold, saying "a threat's a threat," and giving the planners, the source protectors, this particular tool for their use in making sure that the water in the area they're protecting is safe and sound.

The Chair: Further comments, questions?

Mr. Wilkinson: We've already put on the record that we believe that Justice O'Connor's lengthy and considered work on this matter says we need to be able to deal with significant drinking water threats first and not be bogged down by trying to do all things all at once. That's why we don't support the motion. That's it.

The Chair: If members are ready to proceed to the vote, we'll have a vote on NDP motion 67.

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 68.

Mr. Tabuns: I move that subsection 19(3) of the bill be struck out and the following substituted:

"Designation of activities for section 49

"(3) An activity shall not be designated under paragraph 3 of subsection (2) if the activity is a type of activity prescribed by the regulations.

"Same

"(3.1) An activity shall not be designated under paragraph 3 of subsection (2) unless the activity is identified in the assessment report as a possible future activity that would be a significant drinking water threat."

We've left the term "significant drinking water threat" in because we didn't think we would get your support if we got rid of it. This gives the source protection committee greater powers to potentially prohibit a broader spectrum of activities that threaten drinking water. Under the act, an activity can only be designated by a source

protection committee for prohibition under section 49 if it's prescribed in the regulations. So at present, the source protection committee can only prohibit what's listed in the regulations. We've reversed that. Something can be prohibited unless it is exempted in the regulations, giving broader powers to the source protection committee.

The Chair: Comments?

Mr. Wilkinson: Given the deputations that we've received over the last three years, we believe that the bill, as drafted, achieves the correct balance.

The Chair: We'll proceed, then, to the vote.

Mr. Tabuns: Recorded, please, Mr. Chair.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We'll proceed now to NDP motion 69.

Mr. Tabuns: I move that subsection 19(4) of the bill be struck out and the following substituted:

"Designation of activities for section 50

"(4) An activity shall not be designated under paragraph 4 of subsection (2) if the activity is a type of activity prescribed by the regulations and,

"(a) is an existing activity that is a drinking water threat; or

"(ii) is a possible future activity that would be a drinking water threat."

Again, in this instance, it's taking the opportunity to remove "significant" and putting in a more concrete and defined drinking water threat.

Mr. Wilkinson: The same arguments.

The Chair: Same arguments for and/or against? Okay.

Mr. Tabuns: Recorded vote.

Mr. Wilkinson: The same arguments against.

The Chair: Thank you. We'll proceed now with voting on—

Mr. Tabuns: Are you crossing the floor, John? Come on over.

The Chair: Recorded vote, I presume, on NDP motion 69?

Mr. Tabuns: Yes.

Ayes

Tabuns.

Nays

Kular, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 70.

Mr. Tabuns: I move that subsection 19(4) of the bill be struck out and the following substituted:

"Designation of activities for section 50

“(4) An activity shall not be designated under paragraph 4 of subsection (2) if the activity is a type of activity prescribed by the regulations.

“Same

“(4.1) An activity shall not be designated under paragraph 4 of subsection (2) unless the activity is identified in the assessment report as,

“(a) an existing activity that is a significant drinking water threat; or

“(b) a possible future activity that would be a significant drinking water threat.”

Again, this is trying to expand the powers of the source protection committee so that their ability to protect local water is not constrained by the regulations; in fact opens up their powers, something that the parliamentary assistant has consistently said in this debate is something that he wants: more power at the grassroots level. Well, this gives them more power at the grassroots level, less constraint by the regulation process done here in Toronto.

Mr. Wilkinson: Having been inspired by the testimony from countless stakeholders, when you draft a bill, you have to get an appropriate balance. For example, I have one party here who decided in their first two amendments to gut the bill. It would make all of the work that we did irrelevant. Then we have others—and I respect the member. As you’ve said, you want to broaden the bill. You want it to have greater scope than envisioned by Justice O’Connor. So we, as a government, after many years of consultations, have to deal with the whole issue of how to balance and craft a bill that we think has that balance and allows the source planning committees to begin their work with the full faith and confidence of their local community.

This is all about getting people who share the same drinking water to come to a common consensus on their own, as opposed to having one as the first step imposed upon them by government; allow those communities to come together in a consultative way and get to where we all want them to be. So I believe that we have struck the right balance.

Mr. Tabuns: Well, it’s interesting, Mr. Chair. If you, in fact, want to put that power in the hands of the local community, I’m giving you an opportunity in this amendment to expand the power they have to come to their consensus within their community. You have expressed this ongoing interest in having it sorted out at the grassroots level. Well, this is an opportunity to say that it’s at the grassroots where people have debates as to what activities are problematic, without an excessively straitjacketed approach imposed on them by Queen’s Park.

Mr. Wilkinson: I disagree. I think it is naive to believe that we should ignore a great deal of testimony that I think was given to the ministry and to this committee as to how one strikes the appropriate balance. I note that the stakeholders involved are very—and again, I don’t remember a cross-section of stakeholders coming to us and saying that we had not struck the right balance

in this bill. There are some other issues that I know almost all stakeholders told us that they felt needed to be removed from the bill. I think that’s how I know when it’s important for us to take a more balanced approach, or we need to revisit it. I remember distinctly people coming to us and saying that we should not change this. Again, it is up to the government to decide, after consultation, what they consider to be the appropriate balance. I think the bill is balanced, particularly when we look at the goal, which is the appropriate implementation of the bill. Despite the fact that there are some people who don’t want the bill to be implemented and will do everything they can to kind of, I think, put a monkey wrench in, we want to start with the ability for people to deal with that.

1020

Mr. Tabuns: I think our arguments are on record.

The Chair: Thank you, Mr. Tabuns. We’ll proceed, then, to the recorded vote, I presume, on NDP motion 70.

Interjection: Yes, recorded.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 71.

Mr. Tabuns: I move that clause 19(5)(c) of the bill be struck out and the following substituted:

“(c) the activity referred to in clause (b) is a drinking water threat.”

As I’ve tried to do in other amendments, it’s to change the threshold so that the term “significant drinking water threat” is set aside and we go to something concrete and definable, a “drinking water threat.”

Mr. Wilkinson: Same arguments against.

Mr. Tabuns: Recorded vote.

The Chair: That’s certainly efficient. We’ll move to the vote, then, on NDP motion 71.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

NDP motion 72.

Mr. Tabuns: I move that subsection 19(5) of the bill be struck out and the following substituted:

“Designation of land uses for s. 51

“(5) A land use shall not be designated under paragraph 5 of subsection (2) if the land use is a type of land use prescribed by the regulations.

“Same

“(5.1) A land use shall not be designated under paragraph 5 of subsection (2) unless,

“(a) the land use relates to an activity that has been designated under paragraph 3 or 4 of subsection (2) as an activity to which section 49 or 50 should apply; and

“(b) the activity referred to in clause (b) is identified in the assessment report as a possible future activity that would be a significant drinking water threat.”

So we've left in the undefined term “significant drinking water threat.” As I've tried now for a number of amendments, this expands the power of the source protection committee, reduces the straitjacketing that would be imposed from Queen's Park and gives those source protection committees the opportunity to designate any land use they wish for prohibition unless it's a land use that the government has specifically prescribed in the regulations. The word “exempted” is a more useful word, but I gather “prescribed” is the one we have to use.

Mr. Wilkinson: Same arguments against.

The Chair: We'll proceed now to the recorded vote. Those in favour of NDP motion 72?

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

NDP motion 73.

Mr. Tabuns: I move that subsection 19(6) of the bill be amended by striking out “identified in the assessment report” at the end.

Again, an ongoing attempt to increase the power at the local level.

Mr. Wilkinson: Same arguments against.

The Chair: Recorded vote, NDP motion 73.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

We'll proceed now to PC motion 73.1.

Mr. John O'Toole (Durham): I move that subsection 19(6) of the bill be struck out and the following substituted:

“Location or area

“(6) A location or area shall not be specified under paragraph 3, 4 or 5 of subsection (2) unless it is in a surface water intake protection zone, wellhead protection area or a surface rights property located in a vulnerable area identified in the assessment report.”

The purpose for this was the location of the water intake zones or wellhead protection areas—we therefore would like to amend it to include surface rights property in vulnerable areas. I think that's self-explanatory, and I'd ask for a recorded vote.

The Chair: Thank you, Mr. O'Toole. Are there any further comments or questions?

Mr. Wilkinson: We're opposed to the motion for the same reason we were previously.

The Chair: Thank you, Mr. Wilkinson. We'll proceed now to the recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

We'll now re-proceed to government motion—
Interjections.

The Chair: We'll proceed now to government motion 65.

Mr. Wilkinson: Great. Thanks. Just clarifying it for the clerk.

I move that subsections 19(2) to (6) of the bill be struck out and the following substituted:

“Contents

“(2) A source protection plan shall, in accordance with the regulations, set out the following:

“1. The most recently approved assessment report.

“2. Policies intended to achieve the following objectives for every area identified in the assessment report as an area where an activity is or would be a significant drinking water threat:

“i. Ensuring that the activity never becomes a significant drinking water threat.

“ii. Ensuring that, if the activity is being engaged in, the activity ceases to be a significant drinking water threat.

“3. Policies intended to assist in achieving every target established under section 76 for the source protection area, if the minister has directed under subsection 76(5) that a report be prepared that recommends policies that should be set out in the source protection plan to assist in achieving the target.

“4. Policies governing,

“i. the monitoring, in every area that is identified in the assessment report as an area where an activity is or would be a significant drinking water threat, of the activity, and

“ii. the monitoring, in every area that is identified in the assessment report as an area where a condition is a significant drinking water threat, of the condition.

“5. Policies governing,

“i. the monitoring of an activity in an area, if the area is identified in the assessment report as a vulnerable area, the activity is listed in the assessment report as an activity that is or would be a drinking water threat, subparagraph 4i does not apply and the monitoring of the activity is advisable to assist in preventing the activity from becoming a significant drinking water threat, and

“ii. the monitoring of a condition in an area, if the area is identified in the assessment report as a vulnerable area, the condition is listed in the assessment report as a condition that is a drinking water threat, subparagraph 4ii does not apply and the monitoring of the condition is advisable to assist in preventing the condition from becoming a significant drinking water threat.

“6. Policies governing monitoring to assist in implementing and in determining the effectiveness of every policy set out in the source protection plan under paragraph 3.

“7. Policies governing the monitoring of a drinking water issue identified in the assessment report, if the monitoring of the drinking water issue is advisable.

“8. Any other matter required by the regulations.

“Contents relating to ss. 49 to 51

“(2.1) Without limiting the generality of paragraph 2 of subsection (2), the source protection plan may, in accordance with the regulations, set out the following:

“1. A list of activities that are designated by the source protection plan as activities to which section 49 should apply and, for each designated activity, the areas that are designated by the plan as areas within which section 49 should apply to the activity.

“2. A list of activities that are designated by the source protection plan as activities to which section 50 should apply and, for each designated activity, the areas that are designated by the plan as areas within which section 50 should apply to the activity.

“3. A list of land uses that are designated by the source protection plan as land uses to which section 51 should apply and, for each designated land use, the areas that are designated by the plan as areas within which section 51 should apply to the land use.

“4. Policies governing the content of risk management plans that are agreed to or established under section 50.

“Designated Great Lakes policies

“(2.2) A source protection plan may designate a policy set out under paragraph 3 of subsection (2) as a designated Great Lakes policy.

“Designating public body

“(2.3) A policy set out in a source protection plan under paragraph 4, 5, 6 or 7 of subsection (2) shall designate the public body responsible for implementing the policy.

“Other contents

“(2.4) A source protection plan may, in accordance with the regulations, set out the following:

“1. Policies that, for an area identified in the assessment report as an area where a condition that results from a past activity is a significant drinking water threat, are intended to achieve the objective of ensuring that the condition ceases to be a significant drinking water threat.

“2. Policies intended to address activities and conditions that are listed in the assessment report as drinking water threats but that are not addressed by policies set out under paragraph 1 or under paragraph 2 of subsection (2).

“3. Any other matter prescribed by the regulations.

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“Incentive programs; education and outreach programs

“(2.5) Without limiting the generality of paragraphs 2 and 3 of subsection (2) and paragraphs 1 and 2 of subsection (2.4), a source protection plan may, in accordance with the regulations, set out policies governing incentive programs and education and outreach programs.

“Prohibition and regulation of activity

“(2.6) Subject to the regulations, policies set out in a source protection plan under paragraph 2 or 3 of subsection (2) or paragraph 1 or 2 of subsection (2.4) may prohibit or regulate a land use or other activity even if the land use or other activity is not prohibited or regulated under section 49, 50 or 51.

“Designation of activities for s. 49 or 50

“(3) An activity shall not be designated under paragraph 1 or 2 of subsection (2.1) unless the activity is an activity prescribed by the regulations.

“Designation of areas for s. 49 or 50

“(4) An area shall not be designated for an activity under paragraph 1 or 2 of subsection (2.1) unless,

“(a) all of the designated area is in an area that is identified in the assessment report as an area where the activity is or would be a significant drinking water threat; and

“(b) all of the designated area is in a surface water intake protection zone or wellhead protection area identified in the assessment report.

“Same

“(5) An area that is designated for an activity under paragraph 2 of subsection (2.1) shall not include any part of an area that is designated for the activity under paragraph 1 of subsection (2.1).

“Designation of land uses for s. 51

“(6) A land use shall not be designated under paragraph 3 of subsection (2.1) unless,

“(a) the land use is a land use prescribed by the regulations; and

“(b) the land use relates to an activity that has been designated under paragraph 1 or 2 of subsection (2.1) as an activity to which section 49 or 50 should apply.

“Designation of areas for s. 51

“(6.1) An area shall not be designated for a land use under paragraph 3 of subsection (2.1) unless,

“(a) all of the designated area is in an area that is identified in the assessment report as an area where an activity is or would be a significant drinking water threat,

the land use relates to the activity, and the activity has been designated under paragraph 1 or 2 of subsection (2.1) as an activity to which section 49 or 50 should apply; and

“(b) all of the designated area is in a surface water intake protection zone or wellhead protection area identified in the assessment report.”

This motion would amend subsection 19(2), which sets out the mandatory provisions of a source protection plan. Source protection plans would be required to contain the most recently approved assessment report and policies to address significant drinking water threats; policies to assist in achieving Great Lakes targets set by the minister for the source protection area, including monitoring policies, if the minister has requested a report on such policies; policies governing the monitoring of significant drinking water threats; and policies governing the monitoring of drinking water issues and other drinking water threats if the source protection committee believes it is advisable to monitor the issue.

This motion also sets out the authority to designate prescribed activities for the purposes of sections 49, 50 and 51 of part IV, in a separate subsection (2.1), to clarify that designating activities for the purposes of part IV of the bill is not a mandatory requirement of the source protection plan. The amendment would add a new subsection (2.4) to clarify that in addition to the mandatory provisions set out in subsection (2), a source protection plan could also contain policies addressing conditions that are significant drinking water threats and policies addressing activities and conditions that are non-significant drinking water threats.

The Chair: Mr. Tabuns, further comments?

Mr. Tabuns: Before I comment, I'd like to have a question answered. Subsection (2.5), “Incentive programs; education and outreach programs,” can that be separated out for a separate vote from the body of the motion as a whole?

The Chair: Whether it can or not I believe is up to the presenters to decide. We'd have to move an amendment to that effect, and that would have to be considered by the committee.

Mr. Tabuns: I apologize, because I'm not as familiar with procedure here. The amendment would be that I move that this section be taken out, and then we get to vote on the main motion, and then we would go back to the clause that had been taken out?

The Clerk of the Committee (Mr. Trevor Day): The amendment would be to remove it from the amendment that's on the floor right now. A subsequent motion would have to be moved to vote on that piece. So it would have to be amended out of the amendment that's on the floor right now, to strike it. We'd vote on whether to strike it or not, and then you'd have to, again, move the section as a separate amendment on its own.

Mr. Tabuns: Right. I understand. Well, I don't think I'm going to do that. I think I can guess at the outcome of the vote.

I do have problems with what is written here. I think there's a narrowing of the scope of the bill. I think that's problematic for water protection.

But I have to say the section on incentive programs is important. It was very clear both from the environmental community and the agricultural community that having incentive programs was going to be a significant piece of what it would take to make clean water protection happen in this province. I'm not certain that the money that's been allocated will be adequate. I don't have another figure to offer. But I think that that incentive program allocation is something the opposition has called for, something the general public has called for and something that must be in this bill.

Mr. Jeff Leal (Peterborough): Just quickly, I will be asking for a recorded vote. I'm just checking my notes. People who made presentations, particularly in Peterborough and Bath, certainly indicated a need for a substantial overhaul of this particular section of the bill. I think there was quite an articulate water scientist from Orono who may have made a presentation on the need to overhaul this section too, so there was a lot of good input on this matter.

Mr. O'Toole: I'm glad Mr. Leal is listening to my constituents. It's important to me, because I certainly do.

I see this as an example of a drafting amendment. This bill has been changed dramatically from its original scope. I'm not in a position to give much critical assessment of this very large amendment, which changes the complete section technically. I'm not sure, because I'm not briefed enough to know in detail, although I have looked at the other sections, 49, 50 and 51, including 48 which has to do with fees. It's a pretty large section.

But I am concerned and would ask the parliamentary assistant—for instance, the section on page 4 of your amendment. I'll just read it: “Subject to the regulations,”—we don't know what they are “—policies set out in a source protection plan under paragraph 2 or 3 of subsection (2) or paragraph 1 or 2 of subsection (2.4) may prohibit or regulate a land use or other activity even if the land use or other activity is not prohibited or regulated under section 49, 50 or 51.”

Could you just explain that for us so that ordinary farmers and rural people will understand. This is rezoning by any other language. I'm confident in saying—I've been here 11 years. I've sat on almost every committee, and I'm not sure I fully understand the breadth of this amendment. Mr. Leal presumes he does, and I would ask him to answer the question. He has no clue. I'm telling you, without being rude, he has no clue, nor does the parliamentary assistant, as to what this is actually doing to property rights. Not that I'm a defender of property rights, but the general public—if somebody designates something that may cause a risk. Define “may cause.” I find this very difficult and I'm asking, again, not just for a layman's description of what this means—this whole section here, going right down through designation of land use under section 51. It's in that tone that we have a lot of people in Ontario—and I'm trying to give you good advice here—who are concerned.

I'm going to pull out an old article here just to add to the drama of the whole thing. This is an article in the *Globe and Mail*, July 28. I just happened to be reading the *Globe* because the hearings were on. It says, "The Ottawa Valley way: Expressing rural rage with a musical comedy." It goes on to explain, and I think this is very appropriate for all of us to understand, what the rage is about. It's a number of things all coming together at the same time: done rather hastily, limited consultations and limited understanding, quite frankly. The lawyers will understand and the others, mostly, once these things are tested in court.

It goes on. I'm quoting here from an article "This Country" by Roy MacGregor, on July 28. It says, "Everything seemed to go into decline," he says. "You have the removal of so much infrastructure: the railroads, the mills, the small factories. Most of the farms now are back to forest or else they have seasonal owners. People pay high taxes but get next to nothing in return compared to what urban people get for their tax dollars."

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"That's one reason why you see those Back Off Government signs up all over the place these days.' The situation is difficult. The young leave, new investment doesn't come, the city takes no notice....

"People have this sense of being shafted, of being ignored by the cities, and they really don't like it when city people act like we're the crazy fools for living here.

"There's a disenfranchisement bordering on rage, and it's palpable right here."

That's kind of what I'm saying. I'm not trying to add to that or in any way enrage, but it's that lack of understanding and comfort that is causing this response. I'm saying, quite frankly—I said it at the beginning, and Ms. Scott and John Tory have said it as well—that we aren't opposed to protecting drinking water, despite what critics might say. What we are opposed to is acting hastily while not bringing the people of Ontario along, making sure they understand the balance of their rights and the public right, and having a process to resolve those disputes and compensate for those disputes.

I'm not making a theatrical speech here. I'm saying it's a conundrum. I support the goal; what I have a problem with is the process. You've moved an amendment that most members here—Mr. Tabuns is very well informed. He's worked in this area much of his life prior to politics. He has some understanding of the need to be strong on the environmental arguments, and I would support the work he's doing there.

Here, again, when you're talking about land use, potential zoning by policy, by fiat, those need to be understood before we move rather quickly. I'll leave it at that. Hopefully, I'll get an explanation of what this means.

If I have property that's zoned C1 commercial in a rural area where I had a mill at one time and it's now not an active mill, is that future use, not as a mill but as a wood-processing plant—I'm thinking of the Tyrone Mill, one of the oldest mills in Ontario. They have some

serious water problems. It still operates as a water-powered mill. They do process wood. It's a beautiful location, a destination you should visit. It was built in 1856, I think. There would be some potential, because there's kind of an industrial activity going on—may cause a risk or a significant risk to water in the future, in somebody's mind.

The Chair: Thank you, Mr. O'Toole.

Mr. O'Toole: That's just one example of a zoning that I can think of. I can think of hundreds of others. The municipality of Orono, the town, the village of Orono is serviced by two wells on Concessions 4 and 5. They have huge problems in terms of the lack of sewage capacity in the community. They've been looking for a pipe for a sewage treatment for years, because there's a potential effect on issues there.

So I would say that we have every reason, and that Durham region has every reason, to protect. I think this legislation will do that, certainly protect the water, resources that those people drink, and the potential risk for a future private well, which may be somewhat unrelated to the actual well I'm drilling here on my property. So I'm quite sensitive to the importance of this issue. Just look at the zoning issue here and see if you can answer.

Mr. Wilkinson: After that, I think it's clear to all of us why you're confused, but if we can shed any light, I guess I'll ask our friends from the ministry to come and answer your conundrum.

Mr. O'Toole: John, that kind of comment isn't called for. I find it rude.

Mr. Wilkinson: It is absolutely called for.

Mr. O'Toole: No. It's completely rude. You explain to me what—

Mr. Wilkinson: You didn't ask a question. You asked one question and you said, "I have a conundrum," and I'll get you the answer. The rest—

The Chair: Gentlemen, at this point, I'd invite ministry staff to intervene. Please identify yourself and proceed.

Ms. Cynthia Brandon: I'm Cynthia Brandon from the legal services branch of the Ministry of the Environment. With respect to subsection (2.6), I'd like to try to clarify what we were thinking when we put this subsection in.

In the source protection plan, the source protection committee might decide that they are going to designate certain activities as activities to which sections 49, 50 or 51 should apply. Those sections, under part IV, give the authority, then, to prohibit the use of land in certain areas or to essentially regulate the use of land. The significance, then, of that activity being designated under section 49, 50 or 51 would be with respect to, as I say: 49, the prohibition; 50, the need to get a risk management plan in place; and 51, the need to get a notice before the property is developed. So we had done that.

Then some of us became a little bit concerned as to whether or not, having said that you can regulate or prohibit the use of land under sections 49, 50 and 51, we were suggesting that the municipality could not use its

already existing authorities under, for example, the Planning Act or the Municipal Act to regulate or prohibit land use and put those types of policies into their source protection plan. That was not the intention.

So this subsection was included—it was supposed to try to clarify—to say that in fact the municipalities could continue to use those other powers, include those as policies in their source protection plan. That was the purpose of the subsection.

Mr. O'Toole: So you're saying that the municipality, with this amendment, cannot use other acts to change land use? It all becomes subrogated to this act, the source water protection—

Ms. Brandon: No. That was precisely our concern: that some people might think that because we had specifically talked about prohibiting or regulating land use under 49, 50 and 51 and including that in your source protection plan, that we were saying the municipalities can't use the other authorities that they already have.

Mr. O'Toole: But which would take precedence, in terms of—if there is primacy here, in terms of protecting a public resource, i.e. water—risk, potential or significant? Which would take primacy if, for instance, I was going to permit, as a municipal councillor, a mill to operate in an area that had been designated as a significant risk to an aquifer or something? If I'm the mayor and I want the mill to go ahead, and some non-elected source protection committee says, "No. It's in our risk assessment report. Sorry, you're out of business," which would take primacy? Or would I have to go to court now to resolve the primacy issue?

Ms. Brandon: Hopefully not. It would depend on whether it was addressing your policy that has been included in the source protection plan—whether it's there to address a significant drinking water threat or a non-significant drinking water threat. Part III of the act provides that planning decisions and prescribed instruments have to conform with policies that are set out to address significant drinking water threats. If the policy was in fact included to address a non-significant drinking water threat, then the act provides that those decisions have to have regard to those policies. So it depends on the nature of what type of threat is being addressed by the policy.

Mr. O'Toole: I understand the argument of "having regard to" and "consistent with." Bill 51 has that same discussion, as we speak—which has not passed, by the way. That's where it says the policies of the province in water or wetlands or whatever must be consistent in the official plan and other land use decisions by the municipality. As such, you're telling me now that this act has primacy, because in regulation you will have the policies that you wish to endorse in this bill as provincial policy statements. There are no provincial policy statements that I'm aware of just yet with specific regard to water and source water protection.

Ms. Brandon: The policies would be policies within the source protection plan that the committee has—

Mr. O'Toole: Would they be provincial policy statements, though? Because in the Planning Act—51 and the

"regard to" argument—they've got to amend their official plans, both local and regional, to be consistent with provincial policy statements on wetlands and, hopefully, source water. That's the argument that Mr. Tabuns has been making in most of his amendments: the absoluteness of protection.

1050

Ms. Brandon: Section 35 of the bill, which we haven't gotten to yet—

Mr. O'Toole: We haven't got to that yet.

Ms. Brandon: Right. It sets out, in fact, the priority of the source protection plan; again, the policies that affect the significant drinking water threats and the policies that are there to—

Mr. O'Toole: Yes, well it does say in there—and I've read that section—"shall conform with."

Ms. Brandon: Right. I'm not 100% sure what subsection you're referring to there. So subsection (4) says, "if there is a conflict between—"

Mr. O'Toole: That's right, it prevails. So the primacy is this bill.

Ms. Brandon: With respect to the significant drinking water threats, policies, and the Great Lakes policies. It's "the provision that provides the greatest protection to the quality and quantity of the water" that will prevail.

Mr. O'Toole: I appreciate your answer. It has been helpful. I still think it's exactly as I said at the beginning: This does have primacy. You just read section 35—it does. They must conform in the official plan with this bill.

Ms. Brandon: Correct, and with respect—

Mr. O'Toole: Which means they could potentially, in the risk assessment plan, change the current use of property. And I want to know what, then, in the other section, section 88, the compensation section—hopefully there will be an amendment dealing with that so that people are appropriately compensated when you remove a current designation on property. Somebody had to pay for it to get zoned at some point in time in history.

Anyway, I appreciate your attempt at explaining it to me.

The Chair: Thank you, Ms. Brandon.

Thank you, Mr. O'Toole. Are there any further comments or questions?

Mr. Leal: I did have a quick question. Could I have that lady just come back?

The Chair: Ms. Brandon, we welcome you back.

Mr. Leal: This is a fascinating discussion because of official plans and that. All official plans in Ontario already contain provincial statements dealing with wetlands and recharge areas. Local conservation authorities have to sign off on official plans. And conservation authorities now, with the funds they have, are doing a lot of this mapping to incorporate into official plans—that's my understanding—which would identify properties that may have difficulties with regard to those two provincial policy statements and this third one as a result of this bill. That's been the modus operandi in Ontario for years. That's a question—I'm sorry—with a little preamble.

Ms. Brandon: I'm sorry. I missed the question.

Mr. Leal: The question is, there are other provincial policy statements now that are incorporated into all official plans in Ontario, correct?

Ms. Brandon: Yes.

Mr. Leal: Dealing with recharge areas and wetlands.

Ms. Brandon: Yes.

Mr. Leal: Which are sources of water.

Ms. Brandon: Yes.

Mr. Leal: Thank you very much.

The Chair: If there are no further questions, comments or cross-examinations pending, then we'll proceed now to the vote.

Those in favour of government motion 65?

Mr. Leal: Recorded vote.

Ayes

Kular, Leal, Ramal, Tabuns, Wilkinson.

Nays

O'Toole, Scott.

The Chair: Carried.

Shall section 19, as amended, carry? Carried.

Since no amendments have been brought forth for sections 20, 21 and 22, inclusive, we'll consider that as a block. Shall those sections so named carry? Carried.

We'll now proceed to the consideration of section 23. We begin with NDP motion 74.

Mr. Tabuns: I move that section 23 of the bill be amended by adding the following subsection:

"Time limit

"(1.1) An agreement shall not be entered into under subsection (1) later than six months after the source protection area is established."

Again, an attempt to provide some timelines so that in fact, once the bill is proclaimed, there will be action on a timely basis giving people some sense of the urgency with which this matter should be addressed.

When we come to a vote, I'd appreciate that it be recorded.

The Chair: Thank you very much. Any further questions or comments?

Mr. Wilkinson: Mr. Chair, it's our opinion that the minister doesn't require the constraint in the time. We don't feel that the six-month period is appropriate, given the nature of our memorandum of understanding with our municipal partners. I'm sure that we will work together collegially with our municipalities to deal with the implementation, as we have agreed as a government to always do so in regard to our municipal partners.

The Chair: Thank you. We'll proceed, then, to the vote.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

NDP motion 75.

Mr. Tabuns: I move that section 23 of the bill be amended by adding the following subsection:

"Consultation

"(1.2) The minister shall not enter into an agreement under subsection (1) unless he or she is satisfied that it requires consultation equivalent to the consultation required when a source protection plan is prepared by a source protection committee."

It's making the argument that when the minister creates a source protection area, enters into an agreement with a municipality, that the public consultation in developing the plan has to be equivalent to the consultation process required in source protection areas under the control of conservation authorities in the southern part of the province. This tries to ensure that northern citizens have the same protections and consultation opportunities as southern citizens.

The Chair: Thank you, Mr. Tabuns. Mr. Wilkinson.

Mr. Wilkinson: Our government is always required to write a draft and submit and affirm a bill that applies equally to all Ontarians. That's one of the principles of writing a good bill. We think that the one-size-fits-all approach here would not be appropriate when we have over 400 different municipalities in the province of Ontario. We believe, if we can reach an agreement with our municipal partners, that that is the intention of the bill. Trying to put in restrictions doesn't allow both sides to enter into an agreement as quickly. Again, this is all about implementation.

Mr. Tabuns: Recorded vote.

The Chair: We'll proceed now to the vote, if there are no further comments.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

NDP motion 76.

Mr. Tabuns: I move that subsection 23(5) of the bill be amended by striking out "significant drinking water threat" wherever it appears and substituting in each case "drinking water threat."

We've had this debate. I believe that "significant drinking water threat" is not defined—I don't just believe it; that's the case—and that we should be setting the standard at "drinking water threat." A recorded vote, when it comes to that.

The Chair: Comments?

Mr. Wilkinson: The same arguments in opposition.

The Chair: We'll proceed to the vote.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

Government motion 77.

Mr. Wilkinson: I move that clauses 23(5)(b) and (c) of the bill be struck out and the following substituted:

“(b) deem an activity to be an activity that is or would be a drinking water threat, and deem an area to be an area where an activity is or would be a significant drinking water threat; and

“(c) deem a condition that results from a past activity to be a condition that is a drinking water threat, and deem an area to be an area where a condition is a significant drinking water threat.”

This is a point of clarification for the bill.

The Chair: Any further comments?

Mr. Tabuns: Yes. The amendment, as presented, narrows the scope of the original section, deletes the requirement to look at future activities, and thus does not strengthen the bill but weakens it. So I would recommend that all vote against the amendment proposed by the government.

Mr. Wilkinson: This motion is made to reflect the changes in language that are being incorporated throughout the bill, removing references to “existing activities,” “possible future activities” and “existing conditions” in section 23, which provides for the development of source protection plans pursuant to agreements between municipalities outside source protection areas and the minister. Where there is a need to distinguish existing activities from future activities, that distinction would be made in the relevant section of the bill. Again, I believe that this is for clarification.

The Chair: Thank you. Mr. O'Toole.

Mr. O'Toole: Just a quick question to the parliamentary assistant on this one: Given that there were past land uses which, through ignorance, would not have constituted a risk, willingly, on the proponent, and now in the overall assessment and in our knowledge, we would judge that the past activity was a risk, who would be liable? In other words, if a landowner owns that property today where there was a blacksmith's shop, which was deemed to be appropriate at the time, a past activity, and now it's found that there are considerable potential risks on that site—who's liable for the cleanup and such things of the past activity of a previous owner who's now deceased?

1100

Mr. Wilkinson: There are a couple of issues. There are rules and regulations. I think you're describing what we would refer to as a brownfield.

Mr. O'Toole: Well, yes, that's kind of the—and that's why nobody is developing the waterfront, by the way,

because no one wants to own it. No one wants the liability. That's why it's not developed. Who would help remediate that?

Mr. Wilkinson: Since it has to do with the broad application of a number of laws, I'll refer this question to our legal counsel for the ministry, Jamie, who would be able to provide greater clarity. But in principle, again, the idea is that the first order of business is making sure that a significant drinking water threat ceases to be a significant drinking water threat.

Mr. O'Toole: Absolutely. I agree with that totally. Yes.

Mr. James Flagal: My name is James Flagal, and I'm counsel with Ministry of the Environment, legal services branch.

In relation to the question, the bill uses two types of language to describe two types of drinking water threats. If you look at the definition of “drinking water threat,” you'll see it says “activity” and “condition.” What you are speaking about is a condition that results from a past activity. If you look at the motions that the committee considered for section 13, the assessment report provision, you'll see that in the motion that was passed in relation to section 13, when you're doing your assessment report, you look for the activities that are on the landscape—right now or that may exist in the future—in order to determine which ones are drinking water threats. Then you would do something called the risk assessment—this is going to be in the regulations—to find out which ones are the significant drinking water threats, which ones pose a significant risk.

There's one final element. When you're doing this, you also have to look at the conditions that result from past activity—in your example, the brownfield—in relation to who would be responsible. Then the source protection plan could contain policies. For a historically contaminated site, this is the level of threat that it is. Let's say it's moderate, or it's low, or it may even be significant. The source protection plan could then set out policies about how to deal with that threat. What happens to those policies? Part III deals with that. If you look at section 39, you will see that there is an ability for the minister to say to an official who has the authority to deal with that past condition—so think of a couple of things, not only brownfields. What about abandoned wells? That's a very important past condition, or a condition that results from a past activity. So the minister would say to an official who has the ability to deal with that issue, “Consider issuing an instrument”—think of an order, especially with a brownfield. Brownfields are dealt with under the Environmental Protection Act, as an example, right? So what the minister would say is, “Okay, there's this issue here. Now, director, consider issuing an order to people who may be responsible under that act.” So it doesn't add new authority; that's the key. Whoever is responsible now for that brownfield under the Environmental Protection Act, meaning they could be held responsible—all the minister is saying to the director is, “This is a high priority abatement issue. You have to

consider how we're going to deal with this contaminated site." Then you get into the Environmental Protection Act and the provisions there that govern the issuance of orders in relation to contaminated sites.

Mr. O'Toole: I appreciate that. As just a little bit of a follow-up on that: Knowledge has the power of helping us understand past misbehaviours. Science today is far more accurate than it was 10 to 20 years ago. Litigation or remediation is something that's under study on contaminated sites, helping migration and different strategies that they're using in different parts of the world. When you look at this, it is, as I said, because of past activity on a site, unknown to me perhaps. I may not say too much more because I do have a couple of country properties where there may even be wells that I'm not aware of, but there were buildings there once, so there probably is a well somewhere. Do you understand what I mean? This could be a hole into the aquifer, and I've got to now clear the bush, because you can't get to it, to get a string in to fill this hole. That's \$75,000. I'm surprised and quite concerned that I'm going to be liable here because some technician from Ryerson said that I could cause a risk to my neighbours.

Mr. Flagal: What you're raising, though, as I understand it, is that—

The Chair: Mr. Flagal, just for edification of committee members, any policy question should be directed to the parliamentary assistant, please.

Mr. Wilkinson: Mr. O'Toole, I think you're missing the bigger picture here, which is quite simple. This process may uncover a condition due to a past activity that poses a significant drinking water threat to a municipal source of drinking water. There are those who would ill-advisedly jump to the conclusion that somehow the appropriate reaction to that is that it has to be borne by one party alone. I think Mr. Flagal has been very clear that if we have instruments that need to be enacted and acted upon, because through this process we become aware of a significant drinking water threat, it does not mean that the other powers available to the ministry can't be used.

It also puts the onus on the municipality. We may determine, because of past activities, that we've uncovered an area where a municipal source of drinking water is in a heavily contaminated area. The appropriate response to that would be to move the source of the municipal drinking water. In other words, if you can't remediate it, let's not forget the other thing that can happen here, which is that the community uncovers, through this process, that their source of drinking water has a significant risk of being contaminated. Therefore, it is not the only response that's available; there is also what I would refer to as the common-sense approach, which says, "We've uncovered something through this wonderful process and we must take action."

Mr. O'Toole: I don't have any question at all on that. Everyone in their right frame of mind would want to address it. What's missing here is some certainty on how those past activities, unknown at the time, not malicious-

ly intended, are now a huge problem. That's the problem in the brownfields for sure, and it's the problem here. There needs to be a mechanism in the legislation to redress that or resolve those issues because they're the right thing to do, but how do we do it? The person declares bankruptcy, it goes back to the municipality and the municipality or the city of Toronto's then responsible. Well, they don't want it either, so the land sits in court or somewhere—and that's the story I'm trying to get to, and I'll tell you why. It came to my attention that many apple orchards used arsenic. Arsenic is a huge problem, and if it wasn't managed properly, it could have created what would be dealt with in section 39, a past activity, as you said in your excellent explanation—a condition.

Mr. Wilkinson: Just to remind my friend in regard to brownfields, there is the environmental cleanup fund. The minister has always identified that there could be, in the future, a case of hardship which will be revealed through this whole process, and of course with all-party support we were able to put in the stewardship fund. So I think there is now, on balance, the kind of ability for us to deal with these problems. We can't bury our heads in the sand and hope that they're not there; we will uncover what will have to be uncovered and we will eliminate significant threats to drinking water. That is the intention of the bill, that's what we're going to do, and we're not going to shy away from our requirement to do that. I'm not saying it isn't challenging, but we as a community are going to be able to work together to resolve and mitigate these significant threats to drinking water, as Justice O'Connor said we must.

The Chair: Thank you. Seeing no further questions or comments, we'll proceed to the vote on government motion 77. All those in favour? All opposed? Carried.

Consideration of the section as a whole: Shall section 23, as amended, carry? Carried.

We'll proceed now to section 24: NDP motion 78.

1110

Mr. Tabuns: I move that section 24 of the bill be amended by adding the following subsection:

"Existing aboriginal or treaty rights

"(2) Nothing in subsection (1) shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982."

Given that the source protection plans that will be coming forward will impact First Nations—I don't think there's any question; they will impact them—it's important to explicitly recognize the primacy of aboriginal and treaty rights.

We went through this debate yesterday. What I'd like to add to the debate is again a plea to the government to respect treaty rights, incorporate respect for those rights in the legislation, and for them to support this. The opposition has already taken a position in support of the non-derogation clause, so I don't think there's any question there. I assume, in the many hours that have passed since we last debated this one, that you've had a

chance to have further discussion. Will the government be coming onside with this motion?

Mr. Wilkinson: I say to my friend, I appreciate the fact that he brought up this issue and he argued it eloquently yesterday. I know that in the initial motion put forward by the official opposition, it also contained what we consider to be an inappropriate clause binding the government to money, which is not really in order for the opposition to bring in. But then we looked at your amendment in subsection (2). In our opinion, in a government motion that will be submitted for our consideration in the near term a little bit later in the bill, we think we have found the best place to provide this assurance to First Nations. We don't feel that this is the appropriate place, but we believe, after discussion, that there is a best place to put in a non-derogation clause, and I'll be bringing in that amendment later on today.

Mr. Tabuns: Two questions for you, then: What's the problem with this location and what is the virtue of the location that you have found?

Mr. Wilkinson: The problem with this location is that, after consulting with our people, we know that as the debate followed yesterday, it was: Where is the issue where reassurance is required to assure our First Nations that their concern is most acute? Having it where you propose we don't think deals with it. Having it here we don't think deals with it. I'll be more than happy to argue at the time why we think that we have found the right place, but I do want to thank the member for bringing the attention of the government to this issue, and we look forward to the debate.

With all due respect, though, we'll vote it down here. We think we have found the appropriate spot in the bill for this to be contained. I give credit to our friends in the opposition for highlighting the need for something which—we will always respect First Nations and we will always have bills that are in compliance with the Constitution and the supreme law of this land. But if we can provide that assurance like we did in the parks bill, that is the intention of the government.

The Chair: Thank you, Mr. Wilkinson.

Mr. Tabuns: Mr. Chair, just briefly: Since I don't know what motion you'll be bringing forward—I haven't seen the wording; since I don't know what section it will be in, so I can't judge whether I would agree whether or not that section is the correct section: I would urge the government to support this because I don't think it will contradict their stated intent.

When we asked to have this language drafted by the legal staff operating in this building, we were told that this was an entirely appropriate area for this to be included. I'm assuming the legal advice we received from lawyers hired and paid for by the people of Ontario was reasonable advice. I see no reason not to adopt this.

Mr. Wilkinson: I say to my friend, in a bill, if we're going to do this, we have to put it in once. We can't put the same clause in over and over again. The question is: Where is the appropriate place? In your own position you

have put in numerous amendments where you say, "Well, it could be here. It could be here. It could be here." It falls to the government to decide where the appropriate place is to put this in the bill. I thank them for bringing this to our attention, but we feel that we have found the appropriate place. It will be contained only once in the bill. In the opinion of the government, it should not be contained here; there is a better spot.

Mr. Tabuns: Can I just ask legislative counsel—that's why you were brought here: Do you see any disadvantage to having this amendment here in this section of the act?

Mr. Doug Beecroft: This amendment is slightly different than the amendment you proposed yesterday. The amendment you proposed yesterday was a general provision that applied to the whole act. In this provision, you're only addressing the obligation of the minister under section 24 to confer with people.

Mr. Tabuns: Correct.

Mr. Beecroft: So this particular motion has quite a limited application.

Mr. Tabuns: That's correct, but it does, in turn, then, have impact on 24 itself with regard to source protection plans. So in fact it's an appropriate amendment of 24.

Mr. Beecroft: Yes. It relates only to 24.

Mr. Tabuns: Okay. I think my argument's made, Mr. Chair.

Mr. Wilkinson: To make the point, I can tell you that the amendment will be in part IV under "Other," where it deals with a number of cross-jurisdictional issues. We feel that that is the appropriate place in the bill. It provides the clarity or perhaps—

Interjection: Part V.

Mr. Wilkinson: Sorry; part V. Some people are very sharp around here. Yes, it's part V, and there is a section—and again, we think that if we're going to put it in once, we have to put it in the most appropriate place to make sure that the assurance I think that you're asking on behalf of First Nations is given and is given clearly and appropriately.

Mr. Tabuns: No further commentary. Recorded vote, though, Mr. Chair.

The Chair: Thank you, Mr. Tabuns. Indeed.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

Mr. O'Toole: We missed the call.

The Chair: With the committee's indulgence, we'll try it one more time.

All those committee members of social policy who would like to vote in favour of NDP motion 78, would you please do so now?

Ayes

O'Toole, Scott, Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

We'll now proceed to government motion 79.

Mr. Wilkinson: Mr. Chair, did we call section 24? Do we need to deal with section 24?

The Chair: Yes, thank you. Shall section—no, no, wait. We're on government motion—

Mr. Wilkinson: That's on section 25. We were dealing with 24.

Interjection.

Mr. Wilkinson: That was the amendment but not the whole section.

The Chair: Shall section 24 carry? Carried.

We'll now proceed to government motion 79, which, you quite rightly point out, Mr. Wilkinson, is mislabelled here. So government motion 79, which applies to section 25.

Mr. Wilkinson: I move that subsection 25(5) of the bill be amended by striking out "within 30 days" and substituting "within 60 days".

This motion is made to allow the hearings officer 60 days to report back to the minister at the conclusion of a hearing related to a proposed source protection plan rather than 30 days. It's self-evident. We believe that that is for the effective administration of the bill.

The Chair: Are there any further questions or comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 79? Those opposed? Carried.

We'll now proceed to consideration of PC motion 80, which also applies to that same section: section 25. Ms. Scott.

Ms. Laurie Scott (Haliburton–Victoria–Brock): I move that section 25 of the bill be struck out and the following substituted:

"Environmental Review Tribunal

"25(1) The Environmental Review Tribunal shall convene for the purpose of conducting one or more hearings within the source protection area or in the general proximity of that area for the purpose of receiving representations respecting the proposed source protection plan, or any matter relating to the proposed source protection plan.

1120

"Duty of Tribunal

"(2) The tribunal shall fix the time and date for the hearing and shall require that notice, as it specifies, be given to landowners in the source protection area, to other interested persons and to persons and bodies prescribed by regulation.

"Parties

"(3) The source protection authority, any landowner and any other person or body who responds to the notice and any other person specified by the tribunal shall be parties to the hearing.

"Decision

"(4) The tribunal shall serve notice of its decision, together with the reasons for it, on the parties to the hearing and the minister and the minister shall require that the source protection plan be amended to reflect the tribunal's decision.

"Appeals from tribunal decision

"(5) A party to a hearing may appeal from the tribunal's decision on a question of law to the Divisional Court."

This is similar to an amendment that we brought up yesterday. It seeks to provide a comprehensive and fair appeals process to those impacted by the bill.

The Chair: Thank you, Ms. Scott. If there are no further comments—Mr. Wilkinson?

Mr. Wilkinson: We will not be voting in favour. We believe that the bill strikes the right balance and ensures that people have a say. Sending all of this off to the lawyers at the beginning of the process, as far as we're concerned, is just a way of slowing down the process, which people have consistently told us we need to get about doing.

Ms. Scott: With all due respect, we don't feel that's what this amendment is doing and it opens it to a more fair process. I'll leave it at that.

Mr. Wilkinson: I'm sure we disagree on that one.

Ms. Scott: I won't argue—

The Chair: Thank you. We'll proceed to the vote.

Mr. O'Toole: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

Shall section 25, as amended, carry? Carried.

We'll now proceed to section 26, PC motion 81.

Ms. Scott: I move that the portion of subsection 26(1) before clause (a) of the bill be struck out and the following substituted:

"Minister's options

"26(1) The minister shall, after considering any comments and resolutions submitted under section 22 and any comments and other material submitted under subsection 23(8),"

This was brought forward to us by a large number of farm groups, again trying, with similar amendments, to adjust the role of the source protection committee and its ability to advise the minister on decisions.

The Chair: Thank you, Ms. Scott. Any further comments?

Mr. Wilkinson: We'll be voting against this so that we are consistent with our voting record in regard to section 25 as well.

The Chair: We'll proceed to the vote.

Ms. Scott: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

Shall section 26 carry? Carried.

We'll proceed now to consideration of NDP motion 82, which is for a new section, 26.1.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"Deadline for source protection plan

"26.1 The minister shall take such steps as are necessary to ensure that he or she approves the source protection plan under section 26 not later than 18 months after the source protection committee is established under section 7."

Again, in our minds, it's a question of ensuring that there are timelines, a sense of urgency instilled in those who are implementing and carrying through this legislation that drinking water protection occurs quickly, not slowly.

The Chair: Thank you, Mr. Tabuns. Mr. Wilkinson?

Mr. Wilkinson: We're opposed for the same reasons as stated earlier.

Mr. Tabuns: A recorded vote.

The Chair: Thank you. We'll proceed to the vote.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

We'll go for block consideration now of sections 27, 28 and 29, inclusive, no amendments having been received. Shall those sections, so named, carry? Carried.

We'll now move to consideration of section 30, government motion 83.

Mr. Wilkinson: I move that clause 30(3)(b) of the bill be amended by striking out "by the crown in right of Ontario" and substituting "by the crown in right of Ontario or a lead source protection authority specified in the order".

This motion is made to ensure that the minister seeks to recover money given to a source protection authority in connection with the preparation of the terms of

reference, assessment report or source protection plan that the source protection authority has failed to prepare. The minister may require the return of the money paid to the authority directly by the crown or through a lead source protection authority.

The Chair: Thank you. Any further comments? Seeing none, we'll proceed to the vote.

Mr. Wilkinson: Recorded vote.

Ayes

Kular, Leal, Ramal, Tabuns, Wilkinson.

The Chair: Carried.

Shall section 30, as amended, carry? Carried.

We'll proceed now to section 31, PC motion 84, Ms. Scott.

Ms. Scott: I move that section 31 of the bill be struck out and the following substituted:

"Amendments initiated by source protection committee

"31(1) A source protection committee may propose amendments to a source protection plan in the circumstances prescribed by the regulations.

"Copies of proposed amendments for municipalities

"(2) The source protection committee shall give a copy of the proposed amendments to the clerk of each municipality in which any part of the source protection area is located, if the municipality is affected by the amendments.

"Resolutions of municipal councils

"(3) If the council of every municipality whose clerk was given a copy of the proposed amendments passes a resolution endorsing the amendments, or if the amendments only affect unorganized territory, the source protection committee shall,

"(a) publish the proposed amendments in accordance with the regulations;

"(b) give notice of the proposed amendments in accordance with the regulations to the persons prescribed by the regulations, together with information on how copies of the amendments may be obtained and an invitation to submit written comments on the amendments to the source protection committee within the time period prescribed by the regulations; and

"(c) publish notice of the proposed amendments in accordance with the regulations, together with information on how members of the public may obtain copies of the amendments and an invitation to the public to submit written comments on the amendments to the source protection committee within the time period prescribed by the regulations.

"Committee's oversight role

"(6) The source protection committee shall oversee the process of proposing amendments on behalf of the minister.

"Submission of amendments to minister

"(5) The source protection committee shall submit the proposed amendments to the minister, together with the

resolutions passed by the municipal councils and any written comments received by the source protection committee after publication of the amendments under subsection (3).

“Application of ss. 24-29

“(6) Sections 24 to 29 apply, with necessary modifications, to proposed amendments submitted to the minister under subsection (5).”

Currently, Bill 43 indicates that source protection committees have no role beyond the preparation of the source protection plan. Section 31(1) states that it is a source protection authority—i.e. the conservation authority, but not necessarily—that may propose amendments to a source protection plan, and section 31(1) should be amended to indicate that it is a source protection committee that is responsible for proposing amendments to a source protection plan. That came from many agriculture groups that appeared before us.

The Chair: Thank you, Ms. Scott. Further comments?

Mr. Wilkinson: Yes. It is the government’s opinion that, actually, if we were to adopt this it would cancel out the intended role of the source protection authority, so we will not be voting in favour.

Ms. Scott: I just want to put it on the record that we are trying to enhance the role of the source protection committees with this amendment.

The Chair: Thank you. We’ll proceed to the vote, then.

Mr. Wilkinson: Recorded vote.

Ayes

O’Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

Shall section 31 carry? Carried.

We’ll proceed now to section 32, government motion 85.

Mr. Wilkinson: I move that section 32 of the bill be amended by adding the following subsections:

“Amendment to consider drinking-water system

“(1.1) Without limiting the generality of subsection (1), the minister may direct the source protection authority to prepare amendments to a source protection plan to consider any existing or planned drinking-water system specified by the minister that is located in the source protection area.

“Same

“(1.2) Despite subsections (1) and (1.1), the minister shall not direct the source protection authority to prepare amendments to a source protection plan to consider an existing or planned drinking-water system prescribed by the regulations for the purpose of this subsection.”

This motion is made to give the minister the authority to require the amendment of a source protection plan to

include an existing or planned drinking-water system in the source protection area. The drinking-water system required by the minister to be included in the source protection plan cannot include a system prescribed by regulations.

That is just for clarity, and it addresses a lot of the stakeholder concerns that we received.

1130

The Chair: Thank you, Mr. Tabuns?

Mr. Tabuns: Could I just have further explanation? This (1.2), the minister shall not direct the source protection authority to consider drinking water systems prescribed by the regulations, I don’t understand that.

Mr. Wilkinson: I’m going to give you the answer, and if it’s not right, I’m sure we’ll bring somebody up. It is just to prevent duplication. In other words, there are systems that are prescribed, so you can’t call on them twice.

Mr. Tabuns: Unless that’s incorrect.

Mr. Wilkinson: Now we’re going to get some clarity.

Mr. Tabuns: So it’s going to be refined and clarified.

Mr. Wilkinson: I should have just gone to clarity in the first place.

Mr. Tabuns: Okay, yes, if you could explain that.

Mr. Ian Smith: Ian Smith with the Ministry of the Environment. The intent there is that as we draft a regulation, we would go out to the public and ask if single wells could be identified for protection. Based on that regulation, then that would clarify what systems can in fact be brought into this act for protection.

Mr. Tabuns: So you, in the course of doing regulations, will engage in consultations. You will identify a variety of water systems. You will enter those water systems into the regulations, so well such and such at this intersection is to be protected?

Mr. Smith: The current policy intent is to engage in a public discussion around what systems might be brought into protection and what systems should in fact be left out for the current purpose of this act.

Mr. Tabuns: So when you write the regulations, you will actually list those that should be protected?

Mr. Smith: We anticipate listing classes or types of systems rather than identifying individual systems.

Mr. Tabuns: So the minister will be able to specify drinking water systems outside of your list, but not ones that are already on your list, on the assumption that you’ve identified them, they’re dealt with?

Mr. Smith: What we anticipate is how many—for example, we’ve been asked repeatedly during consultations that we’ve taken on this act how many clusters of private wells are an appropriate clustering of wells to be brought into this act, and that is the discussion we wish to have when we consult on the draft regulation.

Mr. Tabuns: Okay.

The Chair: Thank you, Mr. O’Toole?

Mr. O’Toole: Just a similar clarification. The first part of this amendment is to consider drinking water systems, and it goes on to say in (1.1), “protection plan to consider any existing or planned drinking water system.”

What does that specifically mean? I think of the case of Orono. They want to expand the hamlet or the village.

Mr. Wilkinson: I'm not familiar with the case in Orono. But we know that municipalities, for example, are engaged, when they do their land use planning—they do have plans that show that one day they will expand beyond their existing borders. So what this bill anticipates is that it is prudent for a municipality, if it's already identified through its other planning work that there will be a source of municipal drinking water in that land currently not part of the municipality—they're already moving forward, obviously, with the consent to do that. That is something that can be designated. Prudently, you would agree, I believe, that it should be designated because if everyone already knows it's going to be in—

Mr. O'Toole: That's true, because the official plan would be 10 years out or whatever.

Mr. Wilkinson: Yes.

Mr. O'Toole: That being said, can they direct the municipality to nix that expansion? You see, the whole deal today is intensification.

Mr. Wilkinson: Who is "they"? You lost me.

Mr. O'Toole: It says, "the minister may direct the source protection authority to prepare amendments to a source protection plan to consider any existing or planned drinking-water system ... that is located in the source protection area." So in other words, as you've said, and I understand, you've got the area, the official plan says in 10 years we're going to have 10 estate homes out here or whatever. They could direct them that they're not to expand.

Mr. Wilkinson: My understanding from the testimony we received from a lot of stakeholders is that they were concerned that there was no mechanism where the minister could actually listen to people who would come to him or her and say, "You know, you've got this plan, but there's a nursing home, and it's just outside the municipal boundary, and it really should be part of this." The local people don't want to do it, but we just think in the public interest that that is something the minister needs to be able to deal with. In that situation, we don't know what the minister would decide, but it allows that discussion to happen. We had a lot of people who came to us and said that because it wasn't in there, it was presuming that there was no mechanism for that to happen. So given our stakeholder response from people, they felt it was reasonable that we make sure we have that in there.

Mr. O'Toole: I understand that. I think that's a very good discussion, actually, because if there are areas that are poorly serviced today—that's existing—the minister could order that they be considered in their overall plan, which is appropriate, because there may be some risk to those institutions, schools or whatever. What I'm concerned about is the plan. These are non-existing, potential future use situations.

The goal here today is to draw, like they've done in Seattle, a big circle around Durham and say, "That's it. You're not expanding, period. You're going to become

intensified," and fill it up, and everybody will be living in condos in 20 years.

Mr. Wilkinson: And there has to be water for those people, and it has to be clean.

Mr. O'Toole: Agreed. We all agree with that.

Mr. Wilkinson: So there may be a source of drinking water that isn't there yet but will be there.

Mr. O'Toole: Then they limit the growth of a municipality, period.

Mr. Wilkinson: I can tell you that it's the government position, and I would think the position of everybody, that we should not grow a community where there is not a safe, clean source of drinking water.

Mr. O'Toole: It does say, though, in the next section, (1.2), unless it's "prescribed by regulations for the purpose of this subsection." In other words, it's more specific. In other words, they could say in regulations that these types of uses aren't allowed. They could say that in regulation; rural estate development, for instance. They could say that. Do you understand? If they did say it in regulation, then they could be prescribing how future growth could occur in rural or northern or remote Ontario. I'm concerned that they don't have regard—in the last review of the Sewell commission, which I was part of many years ago, there were some very exceptional kinds of urban thinking that went into some of the ideas.

I haven't seen the regulations. I would hope that there isn't anything in regulations that is going to prevent municipalities who are duly elected, duly constituted, and I'm sure have the right interests of their citizens at heart—they have to be respected.

Mr. Wilkinson: Just for clarification, this does not give the minister the power, if a municipality has said, "We do want this included," to turn around and say, "No, you can't." This is about making sure that the people who feel they've been excluded can appeal, can ask the minister to be included. But it does not give the minister authority to go the other way.

Mr. O'Toole: They can't be excluded.

Mr. Wilkinson: That's right. Again, I think it strikes the right balance, given the stakeholder feedback that we got from people.

The Chair: Thank you, gentlemen. We'll now proceed to the vote.

Those in favour of government motion 85? Those opposed? Carried.

Shall section 32, as amended, carry? Carried.

We'll proceed now to section 33, NDP motion 86.

Mr. Tabuns: I move that section 33 of the bill be amended by adding the following subsection:

"Date

"(1.1) The date specified under subsection (1) shall be not later than five years after the source protection plan takes effect."

Given the kinds of changes that we expect to see in Ontario—population growth, urban sprawl, global warming—we do need to have regular review of the bill. We think five years is too long. We set it as the outside limit, and the minister obviously would be able to review more

frequently. We think that it makes sense in terms of good public policy to have that minimum review time and to give the minister the opportunity to go more quickly than that if he or she sees it as necessary.

When we come to a vote, I'd like it to be recorded. Thank you.

1140

The Chair: Thank you, Mr. Tabuns. Are there any further comments?

Mr. Wilkinson: Under the bill, the minister does have the ability to set this, and I have every confidence that it would be done, but we need to do that in consultation with the people who are doing the work and the affected municipalities. I envision the problem of having everybody under review at the same time. I think it's a broad province, and there are obviously areas—and I think that the power granted to the minister in his or her wisdom at the time will allow this to happen. So we're not in support of the motion.

Mr. O'Toole: I agree with Mr. Tabuns here. I think that there should be some, I would say, sunset provisions in any legislation for a review. This is open-ended here. All he's asking for, quite frankly, is to put a date. At the end of the time, they can say, "We're considering, we're looking, we're not prepared at this time to complete the review." But with something this large, in the broadest sense, such a big and important bill, I'd say a sunset provision is important so that you have a mandatory review in five years or 10 years or whatever it is. That's all. I'll be supporting that on that principle alone.

This has just left it open, that a review of the plan must begin by some date. There's no date. If, for instance, we were government the next time, theoretically—that's probably going to happen, I would think; certainly, I hope—then we would be mandated to review this particular bill or legislation. Laurie, of course, would be the minister, I suppose.

The Chair: Thank you, Mr. O'Toole. You've certainly shared a number of master plans, but in any case, if we're ready to proceed with the vote, those in favour of NDP motion 86?

Ayes

O'Toole, Scott, Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated. Shall section 33 carry? Carried. Shall section 34 carry? Carried.

We'll now proceed to consideration of government motion 87 for new section 34.1.

Mr. Wilkinson: I move that the bill be amended by adding the following section:

"Obligation to implement policies

"34.1 A municipality, local board or source protection authority shall comply with any obligation that is im-

posed on it by a significant threat policy or designated Great Lakes policy that is set out in the source protection plan."

This motion is made to expressly provide that the municipality, local board or source protection authority must comply with obligations imposed upon it by policy set out in the source protection plan. We provide this for greater clarity.

The Chair: Are there any comments? Further questions? Seeing none, we'll proceed to the vote. Those in favour of government motion 87?

Mr. Wilkinson: Recorded vote.

The Chair: Recorded vote.

Ayes

Kular, Leal, O'Toole, Ramal, Scott, Tabuns, Wilkinson.

The Chair: Those opposed? Carried.

We'll proceed now to section 35 with PC motion 88.

Mr. O'Toole: I move that subsection 35(1) of the bill be amended by striking out "shall conform with the source protection plan" and substituting "shall have regard to the source protection plan".

The purpose for moving this is that it's sort of the debate we had a little earlier with respect to official policy and stuff like that so that the municipalities are respected as having an important and meaningful role in this process and that they not be completely and absolutely bound by the minister's interpretations.

The Chair: Any further comments?

Mr. Wilkinson: We'll vote against this, because we think it runs contrary to the recommendations that were given by Justice O'Connor to the province of Ontario. I quote page 106 of part II, where he states, "I envision that the planning process would identify areas where the protected measures for drinking water sources are critical to public health and safety and that, in such cases, the plan would govern municipal land use and zoning decisions." We are still of that opinion, and that is why we'll vote against the amendment.

The Chair: We'll proceed now to the vote. Those in favour of PC motion 88?

Mr. O'Toole: Recorded vote.

The Chair: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated. PC motion 89.

Mr. O'Toole: I move that subsection 35(2) of the bill be struck out and the following substituted:

"Conflicts re official plans, by-laws

"(2) Despite any other act, an official plan, a zoning bylaw and a policy statement issued under section 3 of the Planning Act prevail in the case of conflict between any of them and the source protection plan."

We have made this argument on several occasions, with respect. It really is a matter of primacy, of respecting the role of duly elected municipal councillors, who must conform with other statutes and regulations. There's no suggestion of weakening; it's a matter of strengthening the democratic role of duly elected local and regional authorities, who, by the way, are advised by very qualified staff in their jurisdictional areas. So I would ask for your support out of respect for the role of municipal councillors.

Mr. Wilkinson: For the government, I think for anyone to vote for this would show a lack of respect to the families of the people in Walkerton who lost their loved ones and the people who still suffer tremendously, as we heard, in Walkerton. The idea that the ultimate responsibility should lie with those who are elected and that we should not listen to what Justice O'Connor told us, after a lengthy review of this issue, as to how one can make sure that the primacy of public health and safe, clean drinking water is the inspiration and the highest ideal and the highest principle that should prevail—therefore, we'll be voting against the amendment.

Mr. O'Toole: Just a small response to that. Actually, that overstates it. The intent here is not to in any way diminish; it's to pay respect to the different levels of authority and responsibility. To refer this to O'Connor, to the Walkerton situation directly is just—in fact, the argument could be made that there were some due diligence issues in that particular case. I don't want to say that there isn't suffering, and that's the most regrettable of all. We're trying to say that municipalities still have that same authority and responsibility. Let's be clear about it; someone does.

What you're doing here, subtly—and this is the supreme subtlety of this bill. It's shifting all of the liabilities to the municipality. That's what it's actually doing. You have the say but they have the pay. Small-town Ontario, small communities in rural Ontario primarily, are going to be saddled with a huge bureaucracy and having to mandate all these duly elected responsibilities of people much like ourselves, and you aren't giving them five cents to deal with this. If it's that important, if you say the supremacy of this whole thing is that important—and I agree it is—then it should be the province that has the responsibility, and it should be the province that says, "Thou shalt do the following 10 commandments," and pay for it. What you're doing is, "Thou shalt do the following 10 commandments, and you're paying for it." That's where we differ. This is downloading, and it's an absolute insult to inculcate the whole idea that somehow Justice O'Connor would agree with this. He doesn't. In fact, he says it should be a provincial responsibility.

Mr. Wilkinson: I say to the member, it falls upon the government to bring in the bill. Let's just be very clear.

This bill says, "whichever act does the best job of protecting source water." Your amendment says, "No, no, the local municipal, that will prevail." That guts the bill. We didn't do all of this to have the bill gutted, to find out that another instrument is required. If another instrument was required, if the OWRA would do this, if the land use planning would do this, we wouldn't be here. The reason we need to do this is to send a clear signal that communities will come together. You may decide that you think all of this should be prescribed by the government. It sounds to me that you made a great argument about why we should have big government. What we're talking about is local communities being empowered to deal with any significant threat to their drinking water, whether it's quality or quantity. The approach here is inspired by Justice O'Connor. That's why there is absolutely no—I can assure you that we'll have a recorded vote, because I think this will be an issue as to what the position of your party is about the Clean Water Act. If you think that the Planning Act should prevail, I would be more than happy—let's get that on the record right now.

Mr. O'Toole: This has become a fairly significant variance in philosophy and approach.

Mr. Wilkinson: I want to hear what John Tory says about this.

1150

Mr. O'Toole: On the one hand, you're saying in most of your arguments—a rather smarmy kind of implication—that it's working together in community. You're not actually doing that in practice. What you're actually doing is downloading all of the responsibilities for implementation to these fragile communities in mostly rural Ontario. Urban are well served for the most part today, because they have the infrastructure. That's what I'm trying to say here, that in unorganized territories I think the province will have to pay. If there is some idea that they should have piped water or somehow everyone will have to have a chlorination system in their house, then the province will have to pony up there. Well, that's what you're actually doing to these small municipalities. You're forcing them to comply with standards without any access to resources. So your argument of working co-operatively—the proof here is in the legislation. You're downloading every single liability going forward, so the province is exempt. Even if you looked at the section we dealt with earlier where we tried to implement that there be an appeal to the Ontario courts, you've denied that access. You've denied any sense of liability. In future sections you'll see this. So the province is saying, "Here it is. You got it. We shall have oversight and final say in policy and regulation. You're going to pay, and you're going to do the following things." That being said, there isn't a person in Ontario who doesn't want safe, clean, affordable drinking water.

Mr. Wilkinson: And there won't be a person who won't understand that you were here yesterday and granted unanimous consent for the minister to come in here to bring in a stewardship fund, and thanked her because it addresses the concerns that you're raising.

Mr. O'Toole: Seven million dollars won't get you the printing of the regulations.

Mr. Wilkinson: That's a down payment on a problem that hasn't been clearly defined yet.

The Chair: Thank you, gentlemen. Perhaps we might proceed to the vote.

Mr. O'Toole: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

We will now move to the consideration of PC motion 89.1.

Ms. Scott: I move that subsection 35(4) of the bill be struck out and the following substituted:

"Conflicts re provisions in plans, policies

"(4) Despite any act, but subject to a regulation made under clause 100(1)(g), (h) or (i), if there is a conflict between a provision of the source protection plan and a provision in a plan or policy that is mentioned in subsection (5) with respect to a matter that affects the quality or quantity of any water that is used as a source of drinking water, the provision that protects the water supply should prevail."

In order to square all these amendments that are being brought forward—we knew the government would not agree with some of our amendments; it's such a flawed bill, with some 247 amendments, and we'll see how we're going to get through—we thought we would attempt to ensure that owners are not impacted by unintended circumstances or provisions that go beyond the legislation.

This was brought forward to us by several stakeholders, saying that 35(4) as drafted could unnecessarily restrict appropriate rural resource uses and result in poor resource management. It would also resolve all conflict in favour of whatever provides greater protection to the quality and quantity of the water. So we're asking that the province, as suggested in Justice O'Connor's report, take the responsibility here.

Mr. Wilkinson: I have a question for my critic for the environment in the official opposition. It's nice to say that, but my reading of this and the intention of your motion is that it would restrict the application of a conflict provision only to existing drinking water supplies and not to future drinking water supplies. We've been very clear that the purpose of this bill brought forward by the government is for both existing and future water supplies. So why is it consistent that you think existing water supplies should be in and future water supplies should be out?

Ms. Scott: I don't think it was meant to exclude future water supplies. The source protection plans would—

Mr. Wilkinson: But that's exactly what it does, so that's why we're not going to vote for it.

Ms. Scott: Fair enough. I'm just clarifying what we think should be taken into account. You talked about working in a co-operative manner. I think this actually can enhance working in a co-operative manner.

Mr. Wilkinson: By taking out future water supplies? I can't see how that's co-operative. If it says "existing" but not "future," then it's taking out the future.

Mr. O'Toole: I have a small clarification here. I'll give you an example of what crosses my mind. If some resource sectors use fairly significant quantities of water, as we've heard and seen and are aware of, some activities that may go on in the future could involve—who knows? This is where the future thing comes in. You have to have some process to deal with these. For instance, mining is an example where copious amounts of water and energy are used—big time. Energy is the largest cost of production for mining companies and resource companies generally. If you look at the future, some of the technology today is not using saws and dynamite; they're actually using high-pressured water to cut rock—I've read these things—and to do other industrial activities.

They may be able to recover and clean that water. I've no idea what the future can do and the science of water as it is. That's really where my concern is here. There's a need to have at least a provision—if not this amendment—when it comes to future uses. This is what I'm not comfortable with. I'm aware that in Europe, in some countries, they have these local developments on local water treatment facilities. There are marshes and various wetlands and stuff like that that they use to cleanse. Trent University is doing a lot of work in that area itself. I'm just not comfortable with that.

We can sit in Toronto and have an aging degree in water—maybe five years old; it might be too old for what we're talking about. Future use is what I'm talking about. Do you see what I'm saying? You could be limiting the potential economic development or the economic opportunity for northern, remote and rural parts of Ontario.

Mr. Wilkinson: Thanks for clarifying. The intention of your amendment is about restricting the future, which is exactly the point. I'll tell you, I think I'm entitled to have safe, clean drinking water, and I think my children and my grandchildren and their children are also going to be entitled through this bill. I'm not going to restrict and say, "Well, it applies to me but it doesn't apply to future generations."

Again, we're only talking about the extent that there are significant drinking water threats. Surely to God, people will agree that we should not allow significant drinking water threats to sources of common drinking water. So why you would take that out says that there will be two classes: existing, and then in all the future, the rules don't apply. We don't agree with that.

Mr. O'Toole: Actually, it doesn't say anything about future in here.

Mr. Wilkinson: That's my point. If you cared about it, you would have put it in.

Mr. O'Toole: Yes, but we're substituting—your 35(4) doesn't say anything either: "a provision of the source protection plan and a provision in a plan or policy that is mentioned in subsection (5) with respect to a matter that affects or has the potential to affect—" whatever. It doesn't say anything about the future.

Mr. Wilkinson: It would restrict the application of the conflict provision only to existing drinking water supplies—

Mr. O'Toole: We understand. You haven't voted for one of our amendments.

Mr. Wilkinson: —and not to future.

Mr. O'Toole: With all due respect, we try, as Mr. Tabuns does, passionately and sensitively to get some gravity with the amendments we're moving for the right reasons. We've supported many of the motions in this legislation. There's just no willingness to accept a reasonable amendment, which, at the end of the day, can be expunged with a regulation anyway. That's exactly what you'll likely do in any of these things. Anyway, we know that we're here at your calling.

Mr. Wilkinson: Thanks for coming down from the cottage today.

Mr. O'Toole: You're the ones who are bullying forward. Anyway, it's frustrating. I haven't had one success today.

The Chair: Perhaps we'll move to the vote on PC motion 89.1.

Mr. O'Toole: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

This committee is recessed until 1 p.m.

The committee recessed from 1200 to 1302.

The Chair: Thank you, committee members. We'll resume now for consideration of NDP motion 90.

Mr. Tabuns: I move that subsection 35(7) of the bill be amended by striking out "significant drinking water threat" and substituting "drinking water threat".

I've previously made arguments to this effect and they stand here as well.

The Chair: Any further questions?

Mr. Wilkinson: The government has a consistent opinion.

The Chair: We'll proceed to the vote. Those in favour of NDP motion 90? Opposed? Defeated.

Government motion 91.

Mr. Wilkinson: I move that section 35 of the bill be struck out and the following substituted:

"Effect of plan

"35(1) A decision under the Planning Act or the Condominium Act, 1998 made by a municipal council,

municipal planning authority, planning board, other local board, minister of the Crown or ministry, board, commission or agency of the government of Ontario, including the Ontario Municipal Board, that relates to the source protection area shall,

"(a) conform with significant threat policies and designated Great Lakes policies set out in the source protection plan; and

"(b) have regard to other policies set out in the source protection plan.

"Conflicts re official plans, by-laws

"(2) Despite any other act, the source protection plan prevails in the case of conflict between a significant threat policy or designated Great Lakes policy set out in the source protection plan and,

"(a) an official plan;

"(b) a zoning by-law; or

"(c) subject to subsection (4), a policy statement issued under section 3 of the Planning Act.

"Limitation

"(3) Subsection (1) does not apply to a policy statement issued under section 3 of the Planning Act or a minister's order under section 47 of the Planning Act.

"Conflicts re provisions in plans, policies

"(4) Despite any act, but subject to a regulation made under clause 100(1)(g), (h) or (i), if there is a conflict between a provision of a significant threat policy or designated Great Lakes policy set out in the source protection plan and a provision in a plan or policy that is mentioned in subsection (5), the provision that provides the greatest protection to the quality and quantity of any water that is or may be used as a source of drinking water prevails.

"Plans or policies

"(5) The plans and policies to which subsection (4) refers are,

"(a) a policy statement issued under section 3 of the Planning Act;

"(b) the greenbelt plan established under section 3 of the Greenbelt Act, 2005 and any amendment to the plan;

"(c) the Niagara Escarpment plan established under section 3 of the Niagara Escarpment Planning and Development Act and any amendment to the plan;

"(d) the Oak Ridges moraine conservation plan established under section 3 of the Oak Ridges Moraine Conservation Act, 2001 and any amendment to the plan;

"(e) a growth plan approved under section 7 of the Places to Grow Act, 2005 and any amendment to the plan;

"(f) a plan or policy made under a provision of an act that is prescribed by the regulations; and

"(g) a plan or policy prescribed by the regulations, or provisions prescribed by the regulations of a plan or policy, that is made by the Lieutenant Governor in Council, a minister of the crown, a ministry or a board, commission or agency of the government of Ontario.

"Actions to conform to plan

"(6) Despite any other act, no municipality or municipal planning authority shall,

“(a) undertake within the source protection area any public work, improvement of a structural nature or other undertaking that conflicts with a significant threat policy or designated Great Lakes policy set out in the source protection plan; or

“(b) pass a bylaw for any purpose that conflicts with a significant threat policy or designated Great Lakes policy set out in the source protection plan.

“Prescribed instruments

“(7) Subject to a regulation made under clause 100(1)(j), (j.1) or (j.2), a decision to issue, otherwise create or amend a prescribed instrument shall,

“(a) conform with significant threat policies and designated Great Lakes policies set out in the source protection plan; and

“(b) have regard to other policies set out in the source protection plan.

“No authority

“(8) Subsection (7) does not permit or require a person or body,

“(a) to issue or otherwise create an instrument that it does not otherwise have authority to issue or otherwise create; or

“(b) to make amendments that it does not otherwise have authority to make.”

The Chair: Are there any further comments, questions, debate? Mr. O'Toole?

Mr. O'Toole: Yes, just very briefly. This is another case, an example, where they have absolute supremacy in all things. If we look at page 2 of this large amendment, it says:

“Actions to conform to plan

“(6) Despite any other act, no municipality or municipal planning authority shall,

“(a) undertake within the source protection area any public work,” to improve structures or other kinds of things.

My point there is that they can't even repair a pipeline, a water pipe or something like that. The York pipe is a good example. There are huge groundwater issues around that. It's so deep, it's actually affecting the aquifer. Do you understand what I mean? Municipalities are there for a reason. I'm sure they don't deliberately set out to do infrastructure work. It says in the protected area, any public works or improvements of a structural nature or other things that conflict with a significant threat policy or designation. Anyway, good luck. It's rather onerous.

The Chair: We'll proceed now to the vote. Those in favour of government motion 91? Any opposed? None. Carried.

Shall section 35, as amended, carry? Carried.

Section 36, government motion 92.

Mr. Wilkinson: I move that section 36 of the bill be struck out and the following substituted:

“Official plan and conformity

“36. (1) The council of a municipality or a municipal planning authority that has jurisdiction in an area to which the source protection plan applies shall amend its official plan to conform with the significant threat

policies and designated Great Lakes policies set out in the source protection plan.

“Deadline for amendments

“(2) The council or municipal planning authority shall make any amendments required by subsection (1) before the date specified in the source protection plan for the purpose of this section.”

The Chair: Any further comments? Seeing none, we'll proceed to the vote. Those in favour? None opposed. Carried.

PC motion 92.1.

Mr. O'Toole: Just a question, Chair. Is this actually in order now that you've amended the 30 sections? Well, I can move it anyway.

I move that section 36 of the bill be amended by adding the following subsection:

“Same

“(1.1) For the purposes of subsection (1), a provision in an official plan does not conform with the source protection plan if it exceeds the requirements of the source protection plan or is more restrictive than a provision in the source protection plan as it relates to agricultural uses, mineral aggregate operations and wayside pits.”

The Chair: Any comments? Seeing none, we'll proceed to the vote. Those in favour of PC motion 92.1? Those opposed? Defeated.

Shall section 36, as amended, carry? Carried.

Section 37, government motion 93.

Mr. Wilkinson: I move that subsection 37(1) of the bill be amended by striking out the portion before clause (a) and substituting the following:

“Minister's proposals to resolve official plan non-conformity

“37 (1) If, in the minister's opinion, the official plan of a municipality or a municipal planning authority does not conform with a significant threat policy or designated Great Lakes policy set out in the source protection plan, the Minister may,”

The Chair: Any further comments? Seeing none, we'll proceed to the vote. Those in favour? Opposed? None. Carried.

NDP motion 94.

1310

Mr. Tabuns: I move that subsection 37 (2) of the bill be amended by striking out “The minister jointly with the Minister of Municipal Affairs and Housing” at the beginning and substituting “The minister, after consulting with the Minister of Municipal Affairs and Housing,”

When we had our hearings here in Toronto, the Ontario Medical Association came forward. They made only two recommendations to the government on this bill; this is one of them. Their concern was that the wording in the original text would lead to gridlock; that if it was a question of ensuring that the Minister of the Environment and the Minister of Municipal Affairs and Housing came to the same conclusions before action could be taken, we had ourselves in a position where we might not get any movement whatsoever. So they recom-

mended, and I believe the government should adopt, the setting of priority. This is consistent with the government's text in this bill, which says that this act will have primacy over others unless those provide a higher level of drinking water protection. In this case, we're saying the Minister of the Environment should have primacy when there's a conflict between the Minister of the Environment's assessment of a situation and the assessment of the Minister of Municipal Affairs and Housing.

The Chair: Any comments? Seeing none, we'll proceed to the vote.

Mr. Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Kular, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 37, as amended, carry? Carried.

Shall section 38 carry? Carried.

Government motion 95.

Mr. Wilkinson: I move that the bill be amended by adding the following section:

"Prescribed instruments and conformity

"38.1 (1) Subject to a regulation made under clause 100(1)(j), (j.1) or (j.2), a person or body that issued or otherwise created a prescribed instrument before the source protection plan took effect shall amend the instrument to conform with the significant threat policies and designated Great Lakes policies set out in a source protection plan.

"Deadline for amendments

"(2) The person or body that issued or otherwise created the instrument shall make any amendments required by subsection (1) before the date specified in the source protection plan for the purpose of this section.

"No authority

"(3) Subsection (1) does not permit or require a person or body to make amendments that it does not otherwise have authority to make."

The Chair: Any further comments? Seeing none, we'll proceed to the vote.

Shall section 38.1 carry? Carried.

Section 39: NDP motion 96.

Mr. Tabuns: Withdrawn.

The Chair: Government motion 97.

Mr. Wilkinson: I move that subsection 39 (1) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"Requests for amendment or issuance of instruments

"39. (1) Subject to a regulation made under clause 100(1)(j), (j.1) or (j.2), if, in the minister's opinion, a prescribed instrument does not conform with a significant

threat policy or designated Great Lakes policy set out in the source protection plan, the minister may,"

The Chair: Further comments? Seeing none, we'll proceed to the vote.

Those in favour of government motion 97? Opposed? Carried.

Government motion 98.

Mr. Wilkinson: I move that subsection 39 (2) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"Issuance of instrument; conditions resulting from past activities

"(2) If a source protection plan identifies an area where a condition that results from a past activity is a significant drinking water threat and, in the minister's opinion, the issuance or other creation of a prescribed instrument under an act would assist in ensuring that the condition ceases to be a significant drinking water threat, the minister may,"

The Chair: Any further comments? Seeing none, we'll proceed to the vote.

Those in favour of government motion 98? Carried.

Shall section 39, as amended, carry? Carried.

Government motion 99.

Mr. Wilkinson: I move that section 40 of the bill be struck out and the following substituted:

"Monitoring program

"40. If a public body is designated in a source protection plan as being responsible for the implementation of a policy governing monitoring, the public body shall conduct a monitoring program in accordance with the policy."

The Chair: Further comments? Seeing none, we'll proceed to the vote.

All those in favour of government motion 99? Carried.

Shall section 40, as amended, carry? Carried.

NDP motion 100.

Mr. Tabuns: Withdrawn.

The Chair: NDP motion 101.

Mr. Tabuns: I move that subsection 41(2) of the bill be amended by striking out "available to the public" and substituting "available to the public as soon as reasonably possible".

The Chair: Any further comments? We'll proceed to the vote.

Mr. Tabuns: Recorded vote.

Ayes

Scott, Tabuns.

Nays

Kular, Ramal, Wilkinson, Wynne.

The Chair: Defeated. Government motion 102.

Mr. Wilkinson: Mr. Chair, we are withdrawing government motion 102. There is a replacement motion 102.1.

The Chair: Proceed.

Mr. Wilkinson: I move that section 41 of the bill be struck out and the following substituted:

“Annual progress reports

“41. (1) The source protection authority shall annually prepare and submit to the director and the source protection committee in accordance with the regulations a report that,

“(a) describes the measures that have been taken to implement the source protection plan, including measures taken to ensure that activities cease to be significant drinking water threats and measures taken to ensure that activities do not become significant drinking water threats;

“(b) describes the results of any monitoring program conducted pursuant to section 40;

“(c) describes the extent to which the objectives set out in the source protection plan are being achieved; and

“(d) contains such other information as is prescribed by the regulations.

“Submitting report to source protection committee

“(2) At least 30 days before submitting the report to the director under subsection (1), a source protection authority shall submit the report to the source protection committee.

“Review by source protection committee

“(3) After receiving the report from the source protection authority, the source protection committee shall review the report and provide written comments to the source protection authority about the extent to which, in the opinion of the committee, the objectives set out in the source protection plan are being achieved by the measures described in the report.

“Including comments of source protection committee

“(4) If the source protection committee provides comments to the source protection authority under subsection (3) before the report is submitted to the director under subsection (1), the source protection authority shall include a copy of the comments in the report.

“Available to public

“(5) Subject to subsection (6), the source protection authority shall ensure that the report is available to the public as soon as reasonably possible after it is submitted to the director.

“No personal information

“(6) When a report is made available to the public under subsection (5), the source protection authority shall ensure that it does not contain any personal information that is maintained for the purpose of creating a record that is not available to the public.

“Summary of progress reports

“(7) The minister shall include a summary of the reports submitted by source protection authorities under this section in the annual report prepared by the minister under subsection 3(4) of the Safe Drinking Water Act, 2002.”

The Chair: Any further questions or comments? Seeing none, we'll proceed to the vote.

Mr. Wilkinson: Recorded vote.

The Chair: Recorded vote.

Ayes

Kular, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: Carried.

We'll now proceed to government motion 103.

Mr. Wilkinson: I believe we would look at section 41 in entirety now, before we'd move to section 42?

The Chair: Shall section 41, as amended, carry? Carried.

Government motion 103.

Mr. Wilkinson: I move that section 42 of the bill be struck out and the following substituted:

“Enforcement by municipalities

“42. (1) Except where otherwise provided,

“(a) the council of a single-tier municipality is responsible for the enforcement of this part in the municipality; and

“(b) the council of an upper-tier municipality or lower-tier municipality that has authority to pass bylaws respecting water production, treatment and storage under the Municipal Act, 2001, is responsible for the enforcement of this part in the municipality.

“Joint enforcement

“(2) The councils of two or more municipalities referred to in subsection (1) may enter into an agreement,

“(a) providing for the joint enforcement of this part within their respective municipalities;

“(b) providing for the sharing of costs incurred in the enforcement of this part within their respective municipalities; and

“(c) providing for the appointment of a risk management official and risk management inspectors.

“Joint jurisdiction

“(3) If an agreement under subsection (2) is in effect, the municipalities have joint jurisdiction in the area comprising the municipalities.

“Transfer of enforcement responsibility

“(4) The councils of two municipalities referred to in subsection (1) may enter into an agreement providing for the council of one of the municipalities to be responsible for the enforcement of this part in the other municipality with respect to activities identified in the agreement, and for charging the other municipality the whole or part of the cost.

“Same

“(5) If an agreement under subsection (4) is in effect, the municipality that is made responsible for the enforcement of this part in the other municipality has jurisdiction for the enforcement of this part in that municipality with respect to the activities identified in the agreement.

“Risk management official, risk management inspectors

“(6) The council of a municipality that is responsible for the enforcement of this part shall appoint a risk management official and such risk management inspectors as are necessary for that purpose.

“Certificate

"(7) The clerk of the municipality shall issue a certificate of appointment bearing the clerk's signature or a facsimile of it to the risk management official and each risk management inspector appointed by the municipality."

The Chair: Any further questions or comments on government motion 103? Seeing none, we'll proceed to the vote. Those in favour? Opposed? Carried.

Shall section 42, as amended, carry? Carried.

Government motion 104.

Mr. Wilkinson: I move that section 43 of the bill be struck out and the following substituted:

"Enforcement by board of health, planning board or source protection authority

"43. (1) The council of a municipality referred to in subsection 42 (1) and a board of health, planning board or source protection authority may enter into an agreement for the enforcement of this part by the board of health, planning board or source protection authority in the municipality with respect to activities identified in the agreement, and for charging the municipality the whole or part of the cost.

"Power

"(2) If an agreement under subsection (1) is in effect, the board of health, planning board or source protection authority, as the case may be, has jurisdiction for the enforcement of this part in the municipality with respect to the activities identified in the agreement and shall appoint a risk management official and such risk management inspectors as are necessary for that purpose.

"Certificate

"(3) The board of health, planning board or source protection authority, as the case may be, shall issue a certificate of appointment to the risk management official and each risk management inspector appointed under subsection (2)."

1320

The Chair: Further comments? We'll proceed to the vote. Those in favour of government motion 104? Opposed? None. Carried.

Shall section 43, as amended, carry? Carried.

Government motion 105.

Mr. Wilkinson: I move that subsections 44(2), (3), (4), (5) and (6) of the bill be struck out and the following substituted:

"Agreements

"(2) The council of a municipality referred to in subsection 42(1) and the crown in right of Ontario represented by the minister may enter into an agreement providing for the enforcement of this part by Ontario in the municipality with respect to the activities identified in the agreement; subject to such payment in respect of costs as is set out in the agreement.

"Same

"(3) If an agreement under subsection (2) is in effect, Ontario has jurisdiction for the enforcement of this part in the municipality with respect to the activities identified in the agreement."

The Chair: Further comments? Government motion 105: Those in favour? Opposed? Carried.

Shall section 44, as amended, carry? Carried.

Mr. Wilkinson: I move that section 45 of the bill be struck out and the following substituted:

"Agreements re unorganized territory

"45(1) The council of a municipality referred to in subsection 42(1) adjacent to unorganized territory and the crown in right of Ontario represented by the minister may enter into an agreement providing for the enforcement of this part by the municipality with respect to activities identified in the agreement in such part of the unorganized territory and subject to such payment in respect of costs as is set out in the agreement.

"Area of jurisdiction

"(2) The municipality has jurisdiction for the enforcement of this part with respect to the activities identified in the agreement in the area designated in the agreement under subsection (1).

"Board of health, planning board, source protection authority

"(3) A board of health, planning board or source protection authority and the crown in right of Ontario represented by the minister may enter into an agreement providing for the enforcement of this part by the board of health, planning board or source protection authority with respect to activities identified in the agreement in such part of the unorganized territory and subject to such payment in respect of costs as is set out in the agreement, and subsections 43(2) and (3) apply, with necessary modifications."

The Chair: Further commentary? Seeing none, we'll proceed to the vote. Those in favour of government motion 106? Opposed? None. Carried.

Shall section 45, as amended, carry? Carried.

Government motion 107.

Mr. Wilkinson: I move that the bill be amended by adding the following section:

"Prescribed activities

"45.1(1) Despite sections 42 to 45, Ontario is responsible for the enforcement of this part with respect to activities prescribed by the regulations.

"Same

"(2) If a regulation mentioned in subsection (1) is in effect, Ontario has jurisdiction for the enforcement of this part with respect to the activities prescribed by the regulation."

The Chair: Thank you. Further comments? Seeing none, we'll proceed to the vote. Government motion 107: Those in favour? Carried.

Government motion 108.

Mr. Wilkinson: I move that the bill be amended by adding the following section:

"Ontario risk management official and inspectors

"Risk management official

"45.2(1) The director is the risk management official for the enforcement of this part in the areas in which and with respect to the activities for which Ontario has jurisdiction.

"Same

"(2) Despite clause 3(2)(b), a person other than an employee of the ministry or a member of a class of such

employees may be appointed as a director under subsection 3(1) without the approval of the Lieutenant Governor in Council if,

“(a) the person appointed is an employee of another ministry of the government of Ontario or a member of a class of such employees; and

“(b) the appointment specifies that it is in respect of this part.

“Risk management inspectors

“(3) Risk management inspectors necessary for the enforcement of this part in the areas in which and with respect to the activities for which Ontario has jurisdiction shall be appointed by the minister.

“Certificate

“(4) The minister shall issue a certificate of appointment bearing his or her signature or a facsimile of it to the director and each risk management inspector appointed under subsection (3).”

The Chair: Further commentary? We'll proceed to the vote. Those in favour of government motion 108? Those opposed? Carried.

Government motion 109.

Mr. Wilkinson: I move that the bill be amended by adding the following section:

“Qualifications

“45.3(1) A person is not eligible to be appointed as a risk management official under section 42, 43 or 45 unless he or she has the qualifications prescribed by the regulations.

“Same

“(2) A person is not eligible to be appointed as a risk management inspector under this part unless he or she has the qualifications prescribed by the regulations.”

The Chair: Any further commentary? Government motion 109: All in favour? All opposed? Carried.

Shall section 46 carry? Carried.

Government motion 110.

Mr. Wilkinson: I move that subsection 47(1) of the bill be amended by striking out clauses (a) to (h) and substituting the following:

“(a) prescribing classes of risk management plans and classes of risk assessments;

“(b) establishing and governing an inspection program for the purpose of enforcing this part;

“(c) providing for applications under sections 50, 51 and 52 and requiring the applications to be accompanied by such plans, specifications, documents and other information as is set out in the bylaw, resolution or regulation;

“(d) requiring the payment of fees for receiving an application under section 50, 51 or 52, for agreeing to or establishing a risk management plan under section 48 or 50, for issuing a notice under section 51, for accepting a risk assessment under section 52, or for entering property or exercising any other power under section 54, and prescribing the amounts of the fees;

“(e) requiring the payment of interest and other penalties, including payment of collection costs, when fees referred to in clause (d) are unpaid or are paid after the due date;

“(f) providing for refunds of fees referred to in clause (d) under such circumstances as are set out in the bylaw, resolution or regulation;

“(g) prescribing forms respecting risk management plans, acceptances of risk assessments, notices under section 51 and applications under sections 50, 51 and 52, and providing for their use;

“(h) prescribing circumstances in which a person with qualifications prescribed by the regulations may act under clause 48(9)(b), 50(15)(b) or 52(2)(b).”

The Chair: Thank you. Any further commentary?

Mr. O'Toole: On this section here, am I correct in assuming that the applicant in whatever role under (d) here is required to pay fees for an application, so they're going to have to pay to get an application and they're going to have to pay to have that application reviewed? It seems like there is a lot of fee-collecting and interest and stuff going on. Who's this money going to? The municipality's totally responsible.

Mr. Wilkinson: Clean water is not free in this province.

Mr. O'Toole: Not anymore, under the Liberal government, for sure. It seems like there's a lot of stuff in here about collecting money. Who does it go to—the province or to the municipality?

Mr. Wilkinson: We're going to keep the sources of drinking water clean in this province.

Mr. O'Toole: I understand that—“Whether you like it or not.”

Mr. Wilkinson: Right. It's called cost recovery. I think it's something that your government was quite keen on when in government.

Mr. O'Toole: Yes, that's fine. But you've got interest here, penalties. I understand. It's a government motion. We lose; you win.

Mr. Wilkinson: If I don't pay my phone bill, there's interest on that as well.

The Chair: Those in favour of government motion 110? Those opposed? Carried.

Mr. Wilkinson: I move that subsection 47(4) of the bill be amended by striking out “Section 398 of the Municipal Act, 2001 applies” at the beginning and substituting “Section 398 of the Municipal Act, 2001 and section 264 of the City of Toronto Act, 2006 apply”.

This is for clarity.

The Chair: Thank you. Commentary on 111? Seeing none, we'll proceed to the vote. Those in favour? Those opposed? Carried.

Mr. Wilkinson: I move that section 47 of the bill be amended by adding the following subsection:

“Prescribing circumstances under cl. (1)(h)

“(5) The only circumstances that may be prescribed under clause (1)(h) are circumstances prescribed by the regulations.”

The Chair: Any further commentary? Seeing none, we'll proceed to the vote. Government motion 112: Those in favour? Those opposed? Carried.

Shall section 47, as amended, carry? Carried.

NDP motion 113.

Mr. Tabuns: Withdrawn.

The Chair: Thank you. NDP motion 114.

Mr. Tabuns: Withdrawn.

The Chair: NDP motion 115.

Mr. Tabuns: I move that subsection 48(5) of the bill be amended by striking out “may, not earlier than 120 days after the order was issued under subsection (1), issue an order” and substituting “may issue an order”.

As I said earlier, when the Ontario Medical Association came and presented their concerns to this committee—there were only two. You defeated one amendment based on the recommendations; this is their other. They felt that a 120-day waiting period, regardless of how dire the risk, was too long a delay and was unacceptable given the potential implications for human health. This gives the risk management official the power to act immediately. Frankly, the OMA was fairly straightforward. They felt that this was very necessary to ensure protection of human health and safety, and I see no reason why the government would not support this amendment.

The Chair: Thank you. Those in favour of NDP motion 115?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Kular, Leal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 116.

1330

Mr. Wilkinson: I move that section 48 of the bill be struck out and the following substituted:

“Interim risk management plans

“48(1) Subject to subsection (9), a person engaged in an activity or proposing to engage in an activity and a risk management official may agree to a risk management plan for the activity at a particular location if,

“(a) the activity is prescribed by the regulations for the purpose of this section; and

“(b) the director has approved an assessment report and,

“(i) the activity is or will be engaged in in an area identified in the assessment report as an area where the activity is or would be a significant drinking water threat, and

“(ii) the area identified in the assessment report as an area where the activity is or would be a significant drinking water threat is within a surface water intake protection zone or wellhead protection area.

“Notice of plan

“(2) If a risk management official and a person agree to a risk management plan under subsection (1), the risk management official shall provide written notice to the person and shall attach a copy of the plan to the notice.

“Deadline for agreement

“(3) In the circumstances prescribed by the regulations, the risk management official may give a person a notice indicating that, if no risk management plan is agreed to under subsection (1) by a date specified in the notice, the risk management official intends to establish a risk management plan for the activity at the location.

“Specified date

“(4) A date specified in a notice under subsection (3) shall be at least 60 days after the notice is given.

“Waiving notice period

“(5) A person to whom a notice has been given under subsection (3) may consent in writing to the establishment of the risk management plan before the date specified in the notice.

“Order establishing risk management plan

“(6) Subject to subsections (5) and (9), if a notice is given under subsection (3) and no risk management plan is agreed to under subsection (1) by the date specified in the notice, the risk management official shall, by order, establish a risk management plan for the activity at the location.

“Amendment of risk management plan

“(7) Subject to subsections (8) and (10), subsections (1) to (6) apply, with necessary modifications, to the amendment of a risk management plan.

“Amendment; deadline

“(8) For the purpose of subsection (7), the 60-day period referred to in subsection (4) may be shortened by the risk management official if,

“(a) the risk management official is of the opinion that the amendment of the risk management plan is required to prevent a drinking water health hazard; and

“(b) the notice given under subsection (3) sets out the reasons for the opinion referred to in clause (a).

“Criteria for agreeing to or establishing a risk management plan

“(9) A risk management official shall agree to or establish a risk management plan for an activity at a location under this section if, and only if,

“(a) the risk management official,

“(i) is satisfied that the risk management plan complies with the requirements, if any, of the regulations and rules, and

“(ii) is satisfied that, if the activity is engaged in at that location in accordance with the plan, the plan will reduce by a reasonable amount the potential for the activity to adversely affect the raw water supplies of the drinking water systems that obtain water from the area identified in the assessment report as an area where the activity is or would be a significant drinking water threat; or

“(b) in circumstances prescribed under clause 47(1)(h), a person with qualifications prescribed by the regulations has stated, in a form obtained from or approved by the director, that the person,

“(i) is satisfied that the risk management plan complies with the requirements, if any, of the regulations and rules, and

“(ii) is satisfied that, if the activity is engaged in at that location in accordance with the plan, the plan will reduce by a reasonable amount the potential for the activity to adversely affect the raw water supplies of the drinking water systems that obtain water from the area identified in the assessment report as an area where the activity is or would be a significant drinking water threat.

“Criteria for amendment

“(10) Subsection (9) applies, with necessary modifications, to the amendment of a risk management plan and, for that purpose, a reference in subsection (9) to a risk management plan shall be deemed to be a reference to the amended plan.

“Compliance with risk management plan

“(11) If a risk management plan is agreed to or established under this section for an activity at a location, a person shall not engage in that activity at that location except in accordance with the plan.

“Source protection plan in effect

“(12) No risk management plan may be agreed to, established or amended under this section if a source protection plan in respect of the source protection area where the activity is engaged in is in effect.

“Risk management plan ceases to apply

“(13) A risk management plan agreed to or established under this section ceases to apply to an activity at a location if,

“(a) a source protection plan has taken effect and subsection 49(1) applies to that activity at that location; or

“(b) a source protection plan has taken effect and,

“(i) the activity is not an activity designated in the source protection plan as an activity to which section 50 should apply, or

“(ii) the location of the activity is not within an area designated in the source protection plan as an area within which section 50 should apply.”

The Chair: Thank you, Mr. Wilkinson. Further comment?

Mr. O'Toole: This is a fairly onerous section as well. I'd say that the issue that I take with you here—I gather that the risk management official is actually an employee of the provincial government.

Mr. Wilkinson: You'd be incorrect there. The act, as noted previously, allows certain leeway. People who are risk management employees are employees of the municipality or the source planning authority. In the previous parts of the bill, we determined which group has authority.

Mr. O'Toole: That's kind of where my question is coming from. I go back to 108. It says here—

Mr. Wilkinson: For clarity, sir, not all parts have municipalities, and so the provision in 108—

Mr. O'Toole: “Risk management inspectors necessary for the enforcement of this part in the areas in which and with respect to the activities for which Ontario has jurisdiction shall be appointed by the minister.” So they're appointed by the minister and they're paid for by the municipality?

Mr. Wilkinson: Only in those areas where the municipality has agreed to have enforcement done by the province. So the municipalities under this act are able to enter into an agreement with the crown so that enforcement will be done by the province of Ontario.

Mr. O'Toole: Here's the other part. When I look at 48 as it is currently—and I understand the amendments here—it's fairly onerous. If there's a plan drawn up and somebody comes on my property and says, “You're in violation and so you've got to prepare a risk management plan,” I've got this problem now. I've got to go out and pay for an application. There's an order against me. The risk management plan could be—you've got to have an agronomist and all these sort of Ph.D. people doing all this work. It's going to be expensive. Are there any estimates of how much some of these 100-acre risk management plans could amount to?

It's fairly onerous. It says right in here “... would be a significant drinking water threat at that location or within that area, the permit official may issue an order requiring the person to prepare and submit to the permit official, within such time as is specified”—we want it next week—“... a risk management plan.” Anyway, I find it quite onerous.

Mr. Wilkinson: I think the member from Durham will recall the testimony that we had, and I remember specifically talking to so many groups that said, “You know, the permit official is the wrong approach. You have to go to risk management.” I remember speaking to Ms. Beswick from the Glengarry Cattlemen's Association and I said, “So if we change it from the permit official to risk management, would you think that also would go a long way to making sure that the approach was right?” Her response: “I believe so.”

Speaking to Ms. Rice from the Renfrew county local of the National Farmers Union of Ontario, “If we had this risk management official ... do you feel that in that approach your members would say that person would be welcome on their farm?” “Very much so,” was her reply.

When speaking to Chris Hodgson, a former colleague of yours, from the Ontario Mining Association, “Also, it's the government's intention to ensure that a risk management plan is only imposed on a person responsible for an activity that poses a significant risk as a last resort ... would that help assuage some of your concerns?” “Definitely.”

The Chair: Thank you. Perhaps we'll proceed to the vote. Those in favour of government motion 116? Those opposed? Carried.

Shall section 48, as amended, carry? Carried.

Government motion 117.

Mr. Wilkinson: I move that section 49 of the bill be struck out and the following substituted:

“Prohibited activities

“49(1) If a source protection plan that is in effect designates an activity as an activity to which this section should apply and an area within which this section should apply to the activity, a person shall not engage in that activity at any location within that area.

“Transition

“(2) If an activity was engaged in at a particular location immediately before the source protection plan took effect, subsection (1) does not apply to a person who engages in the activity at that location until 180 days after the plan takes effect or such later date as is set out in the source protection plan.”

The Vice-Chair: I'll put the motion for a vote. Carried? Anybody oppose the motion? Okay. The motion is carried.

We move to NDP motion 118.

Mr. Tabuns: I move that section 49 of the bill be amended by adding the following subsection:

“Same

“(3) Subsection (2) does not apply in the circumstances set out in the source protection plan.”

This gives the source protection committees more power in dealing with problematic land uses and activities. I believe that in the spirit of the government's interest in giving power to the grassroots, they should be supportive of this motion.

Mr. Wilkinson: And I can say that we're not supportive because we feel that this motion is actually less stringent than the one we just introduced. We believe that grandfathering should not be subject to negotiation, and that's why we proposed the 180 days.

The Vice-Chair: Any further debate?

Mr. Tabuns: As written by the legislative drafters who talked to us, this actually gives the source protection committees greater latitude in making decisions. It doesn't limit their latitude.

Mr. Wilkinson: Then we have a difference of opinion on that point.

Mr. Tabuns: We do.

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The Vice-Chair: Any further debate? I will put NDP motion 118 for a vote. All in favour?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Kular, Leal, Wilkinson, Wynne.

The Vice-Chair: The motion is defeated. Shall section 49, as amended, carry? Carried. We'll now move to motion 119.

Mr. Tabuns: Withdrawn.

The Vice-Chair: Withdrawn. NDP motion 120.

Mr. Tabuns: I move that section 50 of the bill be amended by adding the following subsection:

“Activities exempted from s. 49(1)

“(3) This section applies, with necessary modifications, to a person who engages in an activity if, pursuant

to subsection 49(2), subsection 49(1) does not apply to the person.”

It just is intended to ensure that existing activities exempt from prohibition under subsection 49(2) are required to undergo a risk assessment under section 50.

The Vice-Chair: Are there any questions?

Mr. Wilkinson: The government cannot accept the motion because it would be inconsistent with the motion we just introduced and carried at section 49. Where a source protection plan is applied, the prohibition in section 49 to an activity in an area where the activity is a significant risk—it means the activity must cease in that area. We're of the opinion that your motion would allow far too much risk, as such an activity would continue in the section 49 area. For that reason, we will not vote in favour of it.

The Vice-Chair: Any further questions or comments?

Mr. Tabuns: No. Recorded vote.

Ayes

Tabuns.

Nays

Kular, Leal, Wilkinson, Wynne.

The Vice-Chair: Motion defeated. Shall section 121 carry?

Mr. Wilkinson: I have to read it into the record.

The Vice-Chair: Okay. Go ahead.

Mr. Wilkinson: I move that section 50 of the bill be struck out and the following substituted:

“Regulated activities

“50(1) If a source protection plan that is in effect designates an activity as an activity to which this section should apply and an area within which this section should apply to the activity, a person shall not engage in that activity at any location within that area unless a risk management plan has been agreed to or established under this section or section 48 for that activity at that location.

“Transition

“(2) Subject to subsections (3) and (4), if an activity was engaged in at a particular location immediately before the source protection plan took effect, subsection (1) does not apply to a person who engages in the activity at that location.

“Same

“(3) If an activity was engaged in at a particular location immediately before the source protection plan took effect and the source protection plan specifies a date for the purpose of this subsection, subsection (1) applies, on and after that date, to a person who engages in the activity at that location.

“Same

“(4) If an activity was engaged in at a particular location immediately before the source protection plan took effect and the risk management official gives notice to a person who is engaged in the activity at that location that,

in the opinion of the risk management official, subsection (1) should apply to the person, subsection (1) applies to a person who engages in the activity at that location on and after a date specified in the notice that is at least 120 days after the date the notice is given.

“Agreement on risk management plan

“(5) Subject to subsections (15) and (16), a person engaged in an activity or proposing to engage in an activity and a risk management official may agree to a risk management plan for the activity at a particular location if,

“(a) a source protection plan designates the activity as an activity to which this section should apply and an area within which this section should apply to the activity; and

“(b) the location is in the area referred to in clause (a).

“Notice of plan

“(6) If a risk management official and a person agree to a risk management plan under subsection (5), the risk management official shall provide written notice to the person and shall attach a copy of the plan to the notice.

“Deadline for agreement

“(7) The risk management official may give a person a notice indicating that, if no risk management plan is agreed to under subsection (5) by a date specified in the notice, the risk management official intends to establish a risk management plan for the activity at the location.

“Specified date

“(8) A date specified in a notice under subsection (7) shall be at least 120 days after the date the notice is given.

“Waiving notice period

“(9) A person to whom a notice has been given under subsection (7) may consent in writing to the establishment of the risk management plan before the date specified in the notice.

“Order establishing risk management plan

“(10) Subject to subsections (9), (15) and (16), if a notice is given under subsection (7) and no risk management plan is agreed to under subsection (5) by the date specified in the notice, the risk management official shall, by order, establish a risk management plan for the activity at the location.

“Application for risk management plan

“(11) A person engaged in an activity or proposing to engage in an activity to which this section applies at a location within an area to which this section applies may apply to the risk management official for the establishment of a risk management plan for the activity at the location.

“Order establishing plan

“(12) Subject to subsections (15) and (16), if an application is made under subsection (11), the risk management official shall, by order, establish a risk management plan for the activity at the location.

“Amendment of risk management plan

“(13) Subject to subsections (14) and (17), subsections (5) to (12) apply, with necessary modifications,

“(a) to the amendment of a risk management plan agreed to or established under this section; and

“(b) to the amendment of a risk management plan agreed to or established under section 48, if, pursuant to subsection 48(12), the plan cannot be amended under that section.

“Amendment; deadline

“(14) For the purpose of subsection (13), the 120-day period referred to in subsection (8) may be shortened by the risk management official if,

“(a) the risk management official is of the opinion that the amendment of the risk management plan is required to prevent a drinking water health hazard; and

“(b) the notice given under subsection (7) sets out the reasons for the opinion referred to in clause (a).

“Criteria for agreeing to or establishing risk management plan

“(15) Subject to subsection (16), a risk management official shall agree to or establish a risk management plan for an activity at a location under this section if, and only if, all applicable fees have been paid and,

“(a) the risk management official,

“(i) is satisfied that the risk management plan complies with the requirements, if any, of the regulations, rules and source protection plan, and

“(ii) is satisfied that the activity will not be a significant drinking water threat if it is engaged in at that location in accordance with the risk management plan; or

“(b) in circumstances prescribed under clause 47(1)(h), a person with qualifications prescribed by the regulations has stated, in a form obtained from or approved by the director, that the person,

“(i) is satisfied that the risk management plan complies with the requirements, if any, of the regulations, rules and source protection plan, and

“(ii) is satisfied that the activity will not be a significant drinking water threat if it is engaged in at that location in accordance with the risk management plan.

“Refusal to establish plan

“(16) The risk management official may refuse to agree to or establish a risk management plan if the past conduct of the applicant or, if the applicant is a corporation, of its officers or directors, affords reasonable grounds to believe that the applicant will not engage in the activity in accordance with the risk management plan.

“Application of subss. (15) and (16) to amendments

“(17) Subsections (15) and (16) apply, with necessary modifications, to the amendment of a risk management plan and, for that purpose, a reference in subsection (15) or (16) to a risk management plan shall be deemed to be a reference to the amended plan.

“Compliance with risk management plan

“(18) If a risk management plan is agreed to or established under this section for an activity at a location, a person shall not engage in that activity at that location except in accordance with the plan.”

The Chair: Thank you, Mr. Wilkinson. Any further comments?

Mr. O'Toole: Once again, the entire section has been completely re-scribed for us. In that, I have a couple of small technical questions.

On page 2, "Order establishing risk management plan," this is the case where the ministry officials sort of step in and establish a risk management plan for the activity at that location. Who pays if the ministry comes in? I can see later on in other sections that they can establish the fee, impose it on your taxes and go ahead and do it—spend the \$50,000 or whatever it costs. Is that right?

Mr. Wilkinson: In the case where negotiation has failed and there is a significant threat to drinking water, an order will be imposed. What is the most important thing is that action is taken to reduce the significant drinking water threat to below that threshold.

Mr. O'Toole: Yes. It goes on to say under "Amendment; deadline," page 3, "For the purpose of subsection (13), the 120-day period referred to in subsection (8) may be shortened by the risk management official"—the bureaucrat, and don't take offence; this is all part of our job here—"if the risk management official is of the opinion ..."

What kind of opinion? If he doesn't like the person?

Mr. Wilkinson: Well, if you continue—

Mr. O'Toole: Is there any science here? He's "of the opinion that the amendment of the risk management plan is required to prevent" some kind of hazard. Is there any science behind this?

If you go on here, and I'm going to make my final point, under "Refusal to establish plan," so it's all kind of related to this. You've got this official out there. It's an order, and you've got this cantankerous Randy Hillier or whomever out there.

Okay, here's this. This is number (16) on page 4: "The risk management official may refuse to agree to or establish a risk management plan if the past conduct of the applicant..." If he's got a criminal record? This past conduct, is it just a matter of opinion, or is it something in regulation that sort of exemplifies behaviour as in regulation number 956, that they have curly hair or certain facial features or whatever?

Mr. Wilkinson: If you read on, it says "reasonable grounds."

Mr. O'Toole: Reasonable, probable grounds.

Mr. Wilkinson: One's hair colour is a not a reasonable consideration as to whether or not there's a significant threat to drinking water.

Mr. O'Toole: If you get an ugly Ministry of the Environment official on your property, you're in big trouble.

Mr. Wilkinson: And I say to Mr. O'Toole, this will all be based on science, something that the good taxpayers of Ontario are paying for.

1350

Mr. O'Toole: We asked for that in amendment number 8, that we have in regulation what the science has described.

Mr. Wilkinson: But you went far beyond that and wanted to gut the bill, and we refused. We've settled that issue.

The Chair: Perhaps, since the fruit of this conversation has been exhausted, we'll proceed now to the vote.

Those in favour of government motion 121? Those opposed? Carried.

Shall section 50, as amended, carry? Carried.

PC motion 122.

Mr. O'Toole: Chair, usually you recognize the person.

The Chair: Mr. O'Toole, please.

Mr. O'Toole: Yes, thank you.

I move that the bill be amended by adding the following section:

"Compensation

"50.1 If a business or farm must cease its activities as a result of a decision under section 49 or 50, the owner of the business or farm shall be compensated for the loss."

I think this is self-explanatory, and it's hopefully addressed by the government's amendment which was introduced at the beginning of these sessions by the minister, the \$7 million.

Mr. Wilkinson: I'm surprised you didn't withdraw it, since you agreed on section 87.1.

Mr. O'Toole: Quite frankly, it's a question. If you had a pork farm, which up until recent times has been a growing agribusiness, and all of a sudden these are now banned, what about all those operations? There are certainly some issues with effluent, nutrient management—Lake Huron, whatever. Is there any court application? Can I go to civil court or the Ontario court to deal with this?

Mr. Wilkinson: We've been clear that there will be a stewardship fund. It's enshrined by law, assuming that we get around to actually getting this bill back into the House and getting it passed, which I'm sure all parties who have said that they're for the Clean Water Act, particularly the principle, are eager to do.

The second thing is that the government has been very clear that there will be cases, in our opinion, of hardship, and the government will play its appropriate role in ensuring that Ontario is a fair and just place to conduct your business in.

The Chair: We'll proceed to the vote. Those in favour of PC motion 122? Shall section 50.1 carry? Those in favour? Those opposed? Defeated.

Section 41, NDP motion 123.

Mr. Tabuns: Withdrawn.

The Chair: Thank you. Government motion 124.

Mr. Wilkinson: I move that subsections 51(1), (2), (3) and (4) of the bill be struck out and the following substituted:

"Restricted land uses

"51(1) If a source protection plan that is in effect designates a land use as a land use to which this section should apply and an area within which this section should apply,

"(a) a person shall not make an application under a provision of the Planning Act prescribed by the regulations for the purpose of using land for that land use at any location within that area; and

"(b) despite section 50, a person shall not construct or change the use of a building at any location within that

area, if the building will be used in connection with that land use,

“unless the risk management official issues a notice to the person under subsection (2).

“Issuance of notice

“(2) The risk management official shall, on application, issue a notice to a person for the purpose of subsection (1) if, and only if, the applicant has paid all applicable fees and,

“(a) neither section 49 nor section 50 applies to the activity for which the land is to be used at the location where the land is to be used; or

“(b) section 50 applies to the activity for which the land is to be used at the location where the land is to be used and a risk management plan that applies to that activity at that location has been agreed to or established under section 48 or 50.

“Time for application

“(3) If section 50 applies to the activity for which the land is to be used at the location where the land is to be used, an application for the issuance of a notice under subsection (2) may be made at the same time that an application is made in respect of the activity under section 50 or 52.

“Copies

“(4) If a risk management official issues a notice under subsection (2), he or she shall give a copy of the notice to the persons prescribed by the regulations.”

The Chair: We’ll proceed to the vote. Those in favour of government motion 124? Those opposed? Carried.

Shall section 51, as amended, carry? Carried.

NDP motion 125.

Mr. Tabuns: Withdrawn.

The Chair: Government motion 126.

Mr. Wilkinson: I move that section 52 of the bill be struck out and the following substituted:

“Risk assessment can exclude application of ss. 48, 49 and 50

“52(1) Sections 48, 49 and 50 do not apply to an activity that is engaged in at a particular location if,

“(a) a risk assessment relating to the activity at that location has been submitted to the risk management official;

“(b) the risk assessment concludes that the activity, if engaged in at that location is not a significant drinking water threat at that location; and

“(c) the risk management official has accepted the risk assessment under this section.

“Acceptance of risk assessment

“(2) On application, the risk management official shall accept a risk assessment that concludes that an activity is not a significant drinking water threat if, and only if, all applicable fees have been paid and,

“(a) the risk management official is satisfied that the activity has been assessed in accordance with the regulations and the rules; or

“(b) in circumstances prescribed under clause 47(1)(h), a person with qualifications prescribed by the regulations has stated, in a form obtained from or

approved by the director, that the person is satisfied that the activity has been assessed in accordance with the regulations and the rules.”

The Chair: Any further commentary? Government motion 126: Those in favour? Those opposed? Carried.

Shall section 52, as amended, carry? Carried.

NDP motion 127.

Mr. Tabuns: Withdrawn.

The Chair: Government motion 128—it’s a notice, actually. Government notice 128.

Shall section 53 carry?

Mr. O’Toole: Recorded vote.

Nays

Kular, Leal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 129.

Mr. Wilkinson: We should have a section 53.1.

I move that the bill be amended by adding the following section:

“Report on activity

“53.1(1) A risk management official may, by order, require a person who engages in or proposes to engage in an activity to which section 48 or 50 applies to provide the risk management official with a report that describes the manner in which the activity is being or is proposed to be engaged in, including any risk management measures that are being or are proposed to be taken with respect to the protection of drinking water sources.

“Same

“(2) A person who is required to provide a report under subsection (1) shall ensure that it is prepared and submitted to the risk management official in accordance with the order.”

So moved.

The Chair: All in favour of government motion 129? Carried.

Shall section 53.1 carry? Opposed? Carried.

Section 54, PC motion 130.

Ms. Scott: I move that section 54 of the bill be amended by adding the following subsections:

“Compliance with regulations

“(2.1) A person entering property that is used as a farm shall ensure that the biosecurity of the farm and the health standards of the farm are not compromised by the entry and that the standards with respect to ensuring that the biosecurity and health standards are not compromised prescribed by regulation are strictly adhered to.

“Notice of entry

“(2.2) A person shall not enter property unless,

“(a) the person gives notice 30 days before entry; and

“(b) the notice sets out the reason for the proposed entry and the nature of the information that is to be collected during the entry.”

The Chair: Any comments?

Mr. Wilkinson: After consultations with agriculture, we believe that government motions at sections 45.3,

54(1.1), 58(1.1) and 79(1.1) address the concerns raised by agriculture.

The Chair: Thank you. Those in favour of—

Mr. O'Toole: Just a question; a couple of comments I want to put on the record. This section here is, I think, superseded by 56 and 57, because there are provisions where an inspector, without an order or other document, can enter. They pretty well can do whatever they want. If you look at sections 56 and 57, if they suspect or if you resist, they can do whatever they want. So they've got total control. That isn't respect for property rights. I just want that on the record.

The Chair: Thank you. Those in favour of PC motion 130? Those opposed? Defeated.

PC motion 131.

Ms. Scott: I move that subsection 54(1) of the bill be amended by striking out "Subject to subsection (2)" at the beginning and substituting "Subject to subsections (2), (2.1) and (2.2)".

The Chair: I'm advised by the clerk that this amendment is out of order, seeing that the preceding amendment was defeated. Therefore, we'll move on.

Mr. Wilkinson: I move that subsection 54(1) of the bill be struck out and the following substituted:

"Inspections

"54. (1) Subject to subsections (1.1) and (2), a risk management inspector may, for the purpose of enforcing this part, enter property, without the consent of the owner or occupier and without a warrant, if,

"(a) the risk management inspector has reasonable grounds to believe that an activity to which section 48, 49 or 50 applies is being engaged in on the property; or

"(b) the risk management inspector has reasonable grounds to believe that there are documents or data on the property that relate to an activity to which section 48, 49 or 50 applies.

"Training

"(1.1) A risk management inspector shall not enter property unless the risk management inspector has received training prescribed by the regulations."

1400

The Chair: Any commentary?

Mr. O'Toole: I was making my point there in 56, 57, but this is clear in here that they can basically go on the property irrespective of the biosecurity issues and all the rest. Yes, they have to have training, but they have to get the documents or the computer files or whatever. It's rather draconian, I'd say.

Mr. Wilkinson: Under the bill, unless there is a significant health hazard, it's my understanding that the landowner must always be given notice in advance in every instance.

The Chair: Thank you. Those in favour of government motion 132? Those opposed? Carried.

Mr. Wilkinson: I move that subsections 54(2) and (3) of the bill be amended by striking out "permit inspector" wherever it appears and substituting in each case "risk management inspector".

The Chair: Commentary?

Mr. O'Toole: I just want to put on the record that the reference I have now is correct. Under section 79—we're not there yet—"may enter property, without the consent of the owner or occupier and without a warrant if," and it goes on to underline circumstances around that where they can exempt themselves from any warrant or anything. Even that allows them pretty serious liberties to do pretty well—and the other person, the person in the home, the family, the children would have to go to court to actually defend their right to say, "No, we have a reason why you shouldn't be here."

Mr. Wilkinson: And all the people who are trying to have safe, clean drinking water from the common source of water have rights as well.

Mr. O'Toole: Section 79 is worth a second look, guys.

Mr. Wilkinson: We haven't got there yet.

Mr. O'Toole: What I'm saying is it just reinforces this draconian approach here.

The Chair: Thank you. Those in favour of government motion 133? Those opposed? Carried.

Government motion 134.

Mr. Wilkinson: I move that subsection 54(10) of the bill be struck out and the following substituted:

"Warrant for entry

"(10) A justice may issue a warrant authorizing a risk management inspector to do anything set out in subsection (1) or (7) if the justice is satisfied, on evidence under oath or affirmation by a risk management inspector, that there are reasonable grounds to believe that it is appropriate for the enforcement of this part for a risk management inspector to do anything set out in subsection (1) or (7) and that a risk management inspector may not be able to effectively carry out his or her duties without a warrant under this subsection because,

"(a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;

"(b) a person has prevented a risk management inspector from doing anything set out in subsection (1) or (7);

"(c) there are reasonable grounds to believe that a person may prevent a risk management inspector from doing anything set out in subsection (1) or (7);

"(d) it is impractical, because of the remoteness of the property to be entered or because of any other reason, for a risk management inspector to obtain a warrant under this subsection without delay if access is denied; or

"(e) there are reasonable grounds to believe that an attempt by a risk management inspector to do anything set out in subsection (1) or (7) without the warrant might not achieve its purpose."

The Chair: Commentary?

Mr. O'Toole: I want to keep on that same thing. I think due process is something we can't just assume and ignore. I'd say people have rights. I'm almost visualizing this. In some of the discussions made, may I presume to say, that Randy Hillier puts on quite a demonstration, if you will, of defiance. Some of the people down in that part of the country have had some run-ins with the

Ministry of the Environment that would be deemed, as was in previous sections, to be not in co-operation with the ministry. Now the ministry, basically, if you act in contempt in any way, under some of these sections we're dealing with, they can throw you in jail immediately, without process or anything else. This section here, I think, is going too far.

I think there is due process here. They can be issued, they can call the police and have the person charged with some kind of violation of some sort, so that there's a law and it can be resolved, but I don't know. I just think these last three sections, including section 79 that we're going to come to, are giving the ministry way too much power—man, oh, man. Some of these people are going to be upset, they're going to say something stupid to the inspector, and the next thing you know they're going to be in the Supreme Court of Canada.

The Chair: Thank you.

Government motion 134: Those in favour? Those opposed? Carried.

Page 135: government motion.

Mr. Wilkinson: I move that subsection 54(18) of the bill be amended by striking out "permit inspector" and substituting "risk management inspector".

The Chair: Commentary? Those in favour of government motion 135? Those opposed? Carried.

Shall section 54, as amended, carry? Carried.

Government motion 136.

Mr. Wilkinson: I move that section 55 of the bill be struck out and the following substituted:

"Enforcement orders

"55(1) If a risk management inspector has reasonable grounds to believe that a person is contravening subsection 49(1) or 50(1), the inspector may make an order requiring the person to do any one or more of the following things:

"1. Comply, by a date specified in the order, with directions set out in the order relating to achieving compliance with subsection 49(1) or 50(1).

"2. Cease engaging in the activity that constitutes the contravention.

"3. Report to the risk management inspector on compliance with the order, in such manner and at such times as are set out in the order.

"Information to be included

"(2) An order under subsection (1) shall briefly describe the nature and location of the contravention.

"Order to comply with directions

"(3) If an order under paragraph 1 of subsection (1) requires a person to comply with directions by a date specified in the order, the order may, during the period from the date the order is issued until the date specified in the order, relieve the person from strict compliance with subsection 49(1) or 50(1), subject to such conditions as are set out in the order.

"Enforcement of risk management plan

"(4) If a risk management inspector has reasonable grounds to believe that a person is failing to implement a provision of a risk management plan agreed to or estab-

lished under section 48 or 50, the inspector may make an order requiring the person to do any one or more of the following things:

"1. Comply, by a date specified in the order, with directions set out in the order relating to implementing the provision of the risk management plan.

"2. Seek an amendment to the risk management plan.

"3. Report to the risk management inspector on compliance with the order, in such manner and at such times as are set out in the order.

"Information to be included

"(5) An order under subsection (4) shall briefly describe the nature of the failure to implement the provision of the risk management plan.

"Order to comply with directions

"(6) If an order under paragraph 1 of subsection (4) requires a person to comply with directions by a date specified in the order, the order may, during the period from the date the order is issued until the date specified in the order, relieve the person from strict compliance with subsection 48(11) or 50(18), subject to such conditions as are set out in the order."

The Chair: Commentary on government motion 136? Seeing none, we'll proceed to the vote. Those in favour? Those opposed? Carried.

Shall section 55, as amended, carry? Carried.

Government motion 137.

Mr. Wilkinson: Mr. Chairman, if you could just give me a second so I can switch binders here, I'll be right with you.

I move that section 56 of the bill be amended by,

(a) striking out "permit official" wherever it appears and substituting in each case "risk management official"; and

(b) striking out "permit official's" wherever it appears and substituting in each case "risk management official's".

The Chair: Commentary?

Mr. O'Toole: Just a point of clarification. We dealt with this in a couple of previous amendments where there was a difference between this "permit official" and now this "risk management official." The risk management official is actually going to be a government employee? Who are they? Are they going to be municipal employees? Who are they going to be working for? I guess it's just a change in name, isn't it? But they're appointed by the minister?

Mr. Wilkinson: No. I think we've already answered that question. It falls to the municipality, but the municipality can enter into an agreement with the province of Ontario and delegate the enforcement powers. So it just depends on the situation. It's the municipality or the municipality may choose to enter into an agreement with the government of Ontario.

Mr. O'Toole: Could the ministry decline to appoint that person if there were something in their purview to do that?

Mr. Wilkinson: I'm sure you were paying attention: All of those people are, by statute, now required to be trained. So that's why they could be denied.

Mr. O'Toole: Yes, okay. Earlier on, you said the permit official, or, in these cases here, the risk management official—that qualification is going to be defined in regulation?

Mr. Wilkinson: Yes.

Mr. O'Toole: So what are they going to have to have: a Ph.D., or what?

Mr. Wilkinson: What they are going to have to do is have appropriate training for the job that they're taking on.

Mr. O'Toole: Yes, but they're going to be like—who's going to pay them?

Mr. Wilkinson: Just like many of our other civil servants. I know that the people who represent our conservation authorities are trained.

Mr. O'Toole: We've had this in previous bills.

Mr. Wilkinson: I know that the people who are building inspectors in municipalities are trained. I know many of the people who work for us are trained. I think it's reasonable that we expect those people to be trained.

Mr. O'Toole: My point is, though, that if you require that they be—a lot of the professions want a person with a designation, with a P. Eng. or whatever it is, which means they're in a whole professional designation of pay, which means you start them at \$90,000 or \$100,000, not at \$62,000. Are you going to specify engineers, or can a technologist be a person—

1410

Mr. Wilkinson: I know that my very reasonable minister is right now consulting with municipalities to come to an agreement that works for all of us, those of us who are concerned about protecting drinking water, that we have adequate training. That is something that is being worked on.

Mr. O'Toole: You haven't made an agreement with the professional engineers, off the record kind of thing, to endorse this bill by saying that they've got to be professional engineers?

Mr. Wilkinson: I learned a long time ago—I've only been here three years—that I don't speculate and answer hypothetical questions offered by the opposition, I'm sure in the friendliest of tones.

Mr. O'Toole: Well, let's wait and see. The municipality is going to have to pay them. I would say it's okay if the government of Ontario is paying them. I know there's only one taxpayer. Okay, thanks very much. I appreciate that. It pretty well answers it.

Mr. Wilkinson: I thought it was interesting when the county of Oxford said it was about \$1.65 per household per month.

The Chair: Those in favour of government motion 137? Those opposed? Carried.

PC motion 138.

Ms. Scott: I move that subsection 56(1) of the bill be amended by adding "or" at the end of subclause (a)(iv) and by striking out clause (b).

This amendment eliminates the provision involving bankruptcy, which was called for by many stakeholders and presenters.

The Chair: Any commentary?

Mr. Wilkinson: [*Inaudible*] things to be done, we are opposed.

The Chair: Thank you. Those in favour of PC motion 138? Those opposed? Defeated.

PC motion 139.

Ms. Scott: I move that subsection 56(2) of the bill be amended by adding "and" at the end of clause (a), by striking out "and" at the end of clause (b) and by striking out clause (c).

This is similar to the previous motion. It eliminates the provision involving bankruptcy.

The Chair: Commentary?

Mr. Wilkinson: We are opposed for the same reason.

The Chair: Those in favour of PC motion 139? Those opposed? Defeated.

PC motion 140 is a notice of which we take note and pass on.

Shall section 56, as amended, carry? Carried.

Government motion 141.

Mr. Wilkinson: I move that section 57 of the bill be amended by striking out "permit official" wherever it appears and substituting in each case "risk management official".

The Chair: Commentary?

Those in favour of 141? Those opposed? Carried.

Shall section 57, as amended, carry? Carried.

Government motion 142.

Mr. Wilkinson: I move that section 58 of the bill be amended by adding the following subsection:

"Training

"(1.1) A person shall not enter property for the purpose of doing a thing unless the person has received training prescribed by the regulations."

The Chair: Commentary?

Those in favour? Those opposed? Carried.

PC motion 143.

Ms. Scott: I move that section 58 of the bill be amended by adding the following subsections:

"Compliance with regulations

"(2.1) A person entering property that is used as a farm shall ensure that the biosecurity of the farm and the health standards of the farm are not compromised by the entry and that the standards with respect to ensuring that the biosecurity and health standards are not compromised prescribed by regulation are strictly adhered to.

"Notice of entry

"(2.2) A person shall not enter property unless,

"(a) the person gives notice 30 days before entry; and

"(b) the notice sets out the reason for the proposed entry and the nature of the information that is to be collected during the entry."

The Chair: Commentary? Debate?

Seeing none, those in favour of PC motion 143? Those opposed? Defeated.

PC motion 144 is out of order, given 143 has been defeated.

Interjections.

Ms. Scott: Yes, I do 144 and then—

The Chair: The Chair retains his right to be right.

Interjections.

Mr. Wilkinson: Despite the assertions by the member from Durham, I believe Ms. Scott is still in the opposition and we're still in the government at the moment.

The Chair: Government motion 145.

Mr. Wilkinson: I move that subsection 58(1) of the bill be amended by striking out "Subject to subsection (2)" at the beginning and substituting "Subject to subsections (1.1) and (2)".

The Chair: Commentary? Debate? Questions?

Those in favour of government motion 145? Those opposed? Carried.

Shall section 58, as amended, carry? Carried.

PC motion 146.

Ms. Scott: I move that section 59 of the bill be amended by striking subsections (3) and (4) and by striking out "subsection (1), (2) or (3)" in the portion of subsection (5) before clause (a) and substituting "subsection (1) or (2)".

Again, it goes back to similar previous motions to seek to eliminate the provisions dealing with bankruptcy.

The Chair: Commentary? Those in favour of PC motion 146? Those opposed? Defeated.

Government motion 147.

Mr. Wilkinson: I move that section 59 of the bill be amended by striking out "permit official" wherever it appears and substituting in each case "risk management official".

The Chair: Commentary? Those in favour of 147? Those opposed? Carried.

Shall section 59, as amended, carry? Carried.

PC motion 149. We'll come back to 148.

Ms. Scott: Okay. I move that section 60 of the bill be amended by adding the following subsection:

"Right of appeal

"(1.1) Before an order to pay costs may be filed with a local registrar, a person affected by the order may appeal the order to the tribunal and the order shall not be enforced until the appeal is decided. The order may only be enforced if it is upheld or modified by the tribunal, but shall not be enforced if it is struck down."

This amendment will allow anyone charged the right of appeal prior to having to pay any costs or fines.

Mr. Wilkinson: The government reminds the member that under section 62, which we'll be getting to, persons affected by a cost recovery order already have the right to appeal, so we won't be voting in favour.

The Chair: Those in favour of PC motion 149? Those opposed? Defeated.

PC motion 148.

Ms. Scott: I move that subsection 60(1) of the bill be amended by adding "Subject to subsection (1.1)" at the beginning.

That's to follow the motion I just made.

The Chair: Motion 148 is out of order. Shall section 60 carry?

Interjection.

The Chair: Motion 148 is out of order; the section is not out of order. Shall section 60 carry? Carried.

Section 61. Government motion 150.

Mr. Wilkinson: I move that section 61 of the bill be amended by striking out "permit official" wherever it appears and substituting in each case "risk management official".

The Chair: Commentary on government motion 150? Seeing none, we'll proceed to the vote. Those in favour of government motion 150? Those opposed? Carried.

Shall section 61, as amended, carry? Carried.

Section 62. Government motion 151.

Mr. Wilkinson: I move that section 62 of the bill be struck out and the following substituted:

"Hearing by tribunal

"Orders

"62 (1) When the risk management official or a risk management inspector makes an order listed in subsection (2), he or she shall serve written notice, together with written reasons for making the order, on the person against whom the order is made.

"Application of subs. (1)

"(2) Subsection (1) applies to:

"1. An order under section 48 or 50 establishing or amending a risk management plan.

"2. An order under section 53.1, 55, 59 or 72.

"Refusals

"(3) When the risk management official refuses to make an order under section 50 establishing or amending a risk management plan or refuses to issue a notice under section 51, he or she shall serve written notice, together with written reasons for the refusal, on the person who made the application for the establishment or amendment of the plan or the issuance of the notice.

"Notice requiring hearing

"(4) A person who receives a notice under subsection (1) or (3) may require a hearing by the tribunal by serving written notice, within 60 days after the service of the notice under subsection (1) or (3), on the tribunal and on the risk management official or risk management inspector who served the notice under subsection (1) or (3)."

The Chair: Further commentary or debate? Seeing none, those in favour of government motion 151? Those opposed? Carried.

Shall section 62, as amended, carry? Carried.

Section 63. Government motion 152.

Mr. Wilkinson: I move that section 63 of the bill be struck out and the following substituted:

"Extension of time for requiring hearing

"63. The tribunal shall extend the time in which a person may give a notice under subsection 62(4) requiring a hearing on an order or refusal where, in the tribunal's opinion, it is just to do so because service of the notice under subsection 62(1) or (3) did not give the person notice of the order or refusal."

1420

The Chair: Any further commentary? Those in favour of government motion 152? Those opposed? Carried.

Shall section 63, as amended, carry? Carried.
Government motion 153.

Mr. Wilkinson: I move that subsections 64(1) and (2) of the bill be struck out and the following substituted:

“Contents of notice requiring hearing

“64(1) A person who requires a hearing by the tribunal shall state in the notice requiring the hearing,

“(a) the portions of the order on which the hearing is required, if the hearing is required on an order; and

“(b) the grounds on which the person intends to rely at the hearing.

“Effect of contents of notice

“(2) Except with leave of the tribunal, at a hearing by the tribunal, the person who required the hearing is not entitled to appeal a portion of an order, or to rely on a ground, that is not stated in the notice requiring the hearing.”

The Chair: Commentary? Those in favour of government motion 153? Those opposed? Carried.

Shall section 64, as amended, carry? Carried.

Government motion 154.

Mr. Wilkinson: I move that subsections 65(1), (2) and (3) of the bill be struck out and the following substituted:

“Stays on appeal

“65(1) The commencement of a proceeding before the tribunal under section 62 does not stay the operation of an order on which the hearing is required, unless the order was made under section 59.

“Tribunal may grant stay

“(2) The tribunal may, on the application of a party to a proceeding commenced under section 62, stay the operation of the order on which the hearing is required.

“When stay may not be granted

“(3) The tribunal shall not stay the operation of an order under subsection (2) if doing so would result in a drinking water health hazard.”

The Chair: Any further commentary? Seeing none, those in favour of government motion 154? Those opposed? Carried.

Shall section 65, as amended, carry? Carried.

Government motion 155.

Mr. Wilkinson: I move that section 66 of the bill be struck out and the following substituted:

“Parties

“66. The parties to the hearing are:

“1. The person requiring the hearing.

“2. The risk management official or risk management inspector who was served under subsection 62(4).

“3. Any other person specified by the tribunal.”

The Chair: Further debate? Those in favour of government motion 155? Those opposed? Carried.

Shall section 66, as amended, carry? Carried.

Government motion 156.

Mr. Wilkinson: I move that section 67 of the bill be amended by striking out “permit official” and substituting “risk management official”.

The Chair: Any commentary? Those in favour? Those opposed? Carried.

Shall section 67, as amended, carry? Carried.

Motion 157, government.

Mr. Wilkinson: I move that section 68 of the bill be amended by,

(a) striking out “permit official” wherever it appears and substituting in each case “risk management official”; and

(b) striking out “permit inspector” wherever it appears and substituting in each case “risk management inspector”.

The Chair: Further commentary? Those in favour? Those opposed? Carried.

Shall section 68, as amended, carry? Carried.

PC motion 158.

Ms. Scott: I move that section 69 of the bill be amended by striking out subsection (2).

That’s similar to previous motions, eliminating the provisions dealing with bankruptcy.

The Chair: Commentary? Those in favour of PC motion 158? Those opposed? Defeated.

Shall section 69 carry? Carried.

Government motion 159.

Mr. Wilkinson: I move that section 70 of the bill be struck out and the following substituted:

“Records

“70(1) Every person required to retain a record pursuant to an order issued under this part or pursuant to a risk management plan that is agreed to or established under sections 48 or 50 shall make the record available to a risk management inspector for inspection on his or her request.

“Copies or extracts

“(2) The risk management inspector may, on giving a receipt, remove any record referred to in subsection (1) for the purpose of making copies or extracts and shall promptly return the record.

“Records in electronic form

“(3) If a record is retained in electronic form, the risk management inspector may require that a copy of it be provided to him or her on paper or in a machine-readable medium or both.”

The Chair: Any further commentary? Those in favour of government motion 159? Those opposed? Carried.

Shall section 70, as amended, carry? Carried.

PC motion 160.

Ms. Scott: I move that section 71 of the bill be amended by striking out “other than a trustee in bankruptcy” in subsection (4) and by striking out subsections (5), (6) and (7).

Again following previous motions to eliminate the provisions dealing with bankruptcy.

The Chair: Commentary? Those in favour of PC motion 160? Those opposed? Defeated.

Government motion 161.

Mr. Wilkinson: I move that section 71 of the bill be struck out and the following substituted:

“Successors and assigns

“71(1) An order under sections 53.1, 55, 59 or 72 is binding on the executor, administrator, administrator

with the will annexed, guardian of property or attorney for property of the person to whom it was directed, and on any other successor or assignee of the person to whom it was directed.

“Limitation

“(2) If, pursuant to subsection (1), an order is binding on an executor, administrator, administrator with the will annexed, guardian of property or attorney for property, their obligation to incur costs to comply with the order is limited to the value of the assets they hold or administer, less their reasonable costs of holding or administering the assets.

“Receivers and trustees

“(3) An order under section 55, 59 or 72 that relates to property is binding on a receiver or trustee that holds or administers the property.

“Limitation

“(4) If, pursuant to subsection (3), an order is binding on a trustee, other than a trustee in bankruptcy, the trustee’s obligation to incur costs to comply with the order is limited to the value of the assets held or administered by the trustee, less the trustee’s reasonable costs of holding or administering the assets.

“Exception

“(5) Subsection (3) does not apply to an order that relates to property held or administered by a receiver or trustee in bankruptcy if,

“(a) within 10 days after taking or being appointed to take possession or control of the property, or within 10 days after the issuance of the order, the receiver or trustee in bankruptcy notifies the risk management official that they have abandoned, disposed of or otherwise released their interest in the property; or

“(b) the order was stayed under part I of the Bankruptcy and Insolvency Act (Canada) and the receiver or trustee in bankruptcy notified the person who made the order, before the stay expired, that they abandoned, disposed of or otherwise released their interest in the property.

“Extension of period

“(6) The risk management official may extend the 10-day period for giving notice under clause (5)(a), before or after it expires, on such terms and conditions as he or she considers appropriate.

“Notice under subs. (5)

“(7) Notice under clause (5)(a) or (b) must be given in the manner prescribed by the regulations.”

The Chair: Any further commentary? Those in favour of government motion 161? Those opposed? Carried.

Shall section 71, as amended, carry? Carried.

Government motion 162.

Mr. Wilkinson: I move that section 72 of the bill be struck out and the following substituted:

“Authority to order access

“72. (1) If a person is required by a risk management plan agreed to or established under section 48 or 50 to do a thing on or in any place, the risk management official may order any person who owns, occupies or has the charge, management or control of the place to permit access to the place for the purpose of doing the thing.

“Same

“(2) A risk management inspector who has authority under this part to require that a thing be done on or in any place also has authority to order any person who owns, occupies or has the charge, management or control of the place to permit access to the place for the purpose of doing the thing.”

The Chair: Any commentary? Those in favour of government motion 162? Those opposed? Carried.

Shall section 72, as amended, carry? Carried.

Government motion 163.

Mr. Wilkinson: I move that section 73 of the bill be struck out and the following substituted:

“Annual reports

“73. Each risk management official shall annually prepare and submit to the appropriate source protection authority in accordance with the regulations a report that summarizes the actions taken by the risk management official and risk management inspectors under this part.”

The Chair: Any commentary? Those in favour of government motion 163? Those opposed? Carried.

Shall section 73, as amended, carry? Carried.

PC motion 164.

Ms. Scott: I move that the bill be amended by adding the following section:

“Protection from action

“73.1 No action or other proceeding lies or shall be instituted against a municipality for any act done in good faith in the exercise or performance or the intended exercise or performance of any power or duty under this part or for neglect or default in the good faith exercise or performance of such a power or duty.”

This was brought to us by many municipalities so that they’ll not be held liable for the actions they’ll be forced to take under this act.

The Chair: Any further comment?

Mr. Wilkinson: The government believes that section 89 of the bill adequately addresses the liability issue.

The Chair: Those in favour of PC motion 164? Those opposed? Defeated.

Government motion 164.1.

Mr. Wilkinson: I move that part V of the bill be amended by adding the following section:

“Existing aboriginal or treaty rights

“73.1 For greater certainty, nothing in this act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982.”

This motion is made to add a new section to the bill stating that nothing in the act abrogates or derogates from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples recognized and affirmed in section 35 of the Constitution Act, 1982. The addition of this section is not intended to affect or expand the protection of aboriginal and treaty rights provided under section 35 of the Constitution Act. It is simply an acknowledgement of those protections.

1430

Mr. Tabuns: I'm pleased to see that yesterday's predictions that including this in the act would be highly problematic, in terms of being redundant and the act already recognizing constitutionality—I'm glad those arguments have been set aside. I'm glad the government is taking the lead of the NDP and Conservative Party in this matter.

The Chair: Shall section 73.1 carry?

Mr. Tabuns: Recorded vote.

Ayes

Kular, Leal, O'Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed? Carried.

Shall section 74 carry? Carried.

Shall section 75 carry? Carried.

Government motion 165.

Mr. Wilkinson: I move that subsection 76(1) of the bill be struck out and the following substituted:

"Great Lakes targets

"76(1) The minister may establish targets relating to the use of the Great Lakes as a source of drinking water for one or more source protection areas that contribute water to the Great Lakes.

"Same

"(1.1) Targets may be established under subsection (1) respecting the quality or quantity of water."

The Chair: Further commentary? Those in favour of government motion 165? Those opposed? Carried.

Government motion 166.

Mr. Wilkinson: I move that subsection 76(5) of the bill be struck out and the following substituted:

"Reports

"(5) If a target is established for a source protection area under this section, the minister may direct the source protection authority for the source protection area to prepare and submit to the minister, in accordance with the direction,

"(a) a report that recommends policies that should be set out in the source protection plan for the source protection area to assist in achieving the target;

"(b) a report that recommends other steps that should be taken to assist in achieving the target; or

"(c) a report that recommends,

"(i) policies that should be set out in the source protection plan for the source protection area to assist in achieving the target, and

"(ii) other steps that should be taken to assist in achieving the target."

The Chair: Further commentary? Those in favour of government motion 166? Those opposed? Carried.

Government motion 167.

Mr. Wilkinson: I move that section 76 of the bill be amended by adding the following subsection:

"Environmental Bill of Rights, 1993

"(7) A target established under this section is a policy for the purpose of the Environmental Bill of Rights, 1993."

The Chair: Commentary? Those in favour of government motion 167? Those opposed? Carried.

Shall section 76, as amended, carry? Carried.

NDP motion 168.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"Municipal water-taking fees

"76.1(1) The council of a municipality may pass bylaws requiring any person who takes water in excess of 50,000 litres per day from a water source located in the municipality to pay a fee to the municipality in the amount determined in accordance with the bylaw.

"Agricultural uses

"(2) A bylaw under subsection (1) does not apply to the taking of water for agricultural purposes."

Mr. Chair, as you are well aware, no commitment has been made to implement water-taking fees as a way of funding or underwriting the necessary monitoring regulation implementation of this act. Municipalities will be saddled, if they're to do this properly, with substantial costs. They need to be given an opportunity to deal with those costs.

Water-taking by large water-bottling companies or other industrial enterprises is something they should be able to charge for. It's consistent with the Liberal election platform 2003. To quote, "We will stop allowing companies to raid our precious water supplies."

I would say that the government is facing a conundrum: How do you fund all of these activities that are absolutely necessary without more money coming out of the provincial pocket? This gives municipalities not the best solution, because I think the funds should be spread across the province for equity purposes, but at least gives some of them an opportunity to raise the funds necessary to provide the protection of the water that we know has to be provided.

The Chair: Those in favour of NDP motion 168?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 169.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"Source protection fund

"76.1(1) Within 90 days after this act receives royal assent, the Minister of Finance shall establish a special purpose account in the consolidated revenue fund, to be known as the source protection fund.

"Water-taking fees

"(2) Within 120 days after the source protection fund is established, the Lieutenant Governor in Council shall make regulations requiring any person who takes water in excess of 50,000 litres per day from a water source located in Ontario to pay a fee to the Minister of Finance in the amount determined in accordance with the regulations.

"Agricultural uses

"(3) A regulation under subsection (2) does not apply to the taking of water for agricultural purposes.

"Fees paid into account

"(4) The fees received by the Minister of Finance under the regulations made under subsection (2) shall be paid into the source protection fund.

"Special purpose

"(5) Money standing to the credit of the source protection fund is, for the purpose of the Financial Administration Act, money paid to Ontario for a special purpose.

"Payments out of fund

"(6) The minister shall direct that money be paid out of the source protection fund, in such amounts and upon such terms as the minister considers advisable, to any person, agency, ministry, municipality, entity or organization that requests financial assistance in order to implement an approved source protection plan.

"Annual report

"(7) The minister shall ensure that a report is prepared annually on the operation and financial affairs of the source protection fund.

"Same

"(8) The minister shall submit the report required by subsection (7) to the Lieutenant Governor in Council and shall table the report with the Speaker of the Legislative Assembly."

Again, we had a commitment from the leader of the Liberal Party in 2003 to go to water-taking fees. We have a need for those fees to fund this protection.

The Chair: Mr. Tabuns, I'm advised under standing order 56 that your NDP motion 169 is out of order, as it is a money bill. We'll now proceed to the next section.

Shall section 77 carry? Carried.

Government motion 170.

Mr. Wilkinson: I move that subsection 77(2) of the bill be struck out and the following substituted:

"Same

"(2) Without limiting the generality of subsection (1), a municipality shall, on request, for a purpose listed in subsection (3),

"(a) provide a source protection authority, source protection committee, municipality or ministry with copies of any document or other record in the possession or control of the municipality that relates to the quality or quantity of any water that is or may be used as a source of drinking water, including,

"(i) any technical or scientific studies undertaken by or on behalf of the municipality, and

"(ii) any document or other record relating to a drinking water threat; and

"(b) assist a source protection authority, source protection committee, municipality or ministry in obtaining information.

"Purposes

"(3) The purposes referred to in subsection (2) are:

"1. The preparation, amendment, updating or reviewing of terms of reference, an assessment report or a source protection plan under this act.

"2. The preparation of a report under this act."

The Chair: Any further commentary? Those in favour of government motion 170? Opposed? Carried.

Shall section 77, as amended, carry? Carried.

Government motion 171.

Mr. Wilkinson: I move that section 78 of the bill be struck out and the following substituted:

"Obligations of others

"78(1) On request, a person or body listed in subsection (2) shall, for a purpose listed in subsection (3), provide a source protection authority, source protection committee, municipality or ministry with copies of any document or other record in the possession or control of the person or body that relates to the quality or quantity of any water that is or may be used as a source of drinking water, including,

"(a) any technical or scientific studies undertaken by or on behalf of the person or body; and

"(b) any document or other record relating to a drinking water threat.

"Persons and bodies

"(2) The persons and bodies referred to in subsection (1) are:

"1. A local board.

"2. A ministry, board, commission or agency of the government of Ontario.

"3. A designated administrative authority within the meaning of the Safety and Consumer Statutes Administration Act, 1996 that is prescribed by the regulations.

"Purposes

"(3) The purposes referred to in subsection (1) are:

"1. The preparation, amendment, updating or reviewing of terms of reference, an assessment report or a source protection plan under this act.

"2. The preparation of a report under this act."

The Chair: Those in favour of government motion 171? Those opposed? Carried.

Shall section 78, as amended, carry? Carried.

Government motion 172.

Mr. Wilkinson: I move that section 79 of the bill be amended by adding the following subsection:

"Training

"(3.1) A person shall not enter property unless the person has received training prescribed by the regulations."

The Chair: Commentary? Those in favour of government motion 172? Those opposed? Carried.

PC motion 173.

Ms. Scott: I move that section 79 of the bill be amended by adding the following subsections:

"Compliance with regulations

“(4.1) A person entering property that is used as a farm shall ensure that the biosecurity of the farm and the health standards of the farm are not compromised by the entry and that the standards with respect to ensuring that the biosecurity and health standards are not compromised prescribed by regulation are strictly adhered to.

“Notice of entry

“(4.2) A person shall not enter property unless,

“(a) the person gives notice 30 days before entry; and

“(b) the notice sets out the reason for the proposed entry and the nature of the information that is to be collected during the entry.”

1440

The Chair: Further commentary? Those in favour of PC motion 173? Those opposed? Defeated.

PC motion 174 is out of order since 173 has just been defeated. We move now to government motion 175.

Mr. Wilkinson: I move that subsection 79(1) of the bill be amended by striking out “Subject to subsection (4)” at the beginning and substituting “Subject to subsections (3.1) and (4)”.

The Chair: Commentary? Those in favour of government motion 175? Those opposed? Carried.

PC motion 176 is out of order.

Government motion 177.

Mr. Wilkinson: I move that subsection 79 (3) of the bill be amended by striking out “Subject to subsection (4)” at the beginning and substituting “Subject to subsections (3.1) and (4)”.

The Chair: Those in favour of government motion 177? Those opposed? Carried.

Shall section 79, as amended, carry? Carried.

NDP motion 178.

Mr. Tabuns: I move that subsection 80(1) of the bill be amended by striking out “imminent drinking water health hazard” and substituting “drinking water health hazard”.

We don’t have a definition of “imminent drinking water health hazard.” I don’t know what that is. Any drinking water health hazard should require notification of the ministry, not simply an imminent and undefined one.

The Chair: Questions, comments?

Mr. Wilkinson: The proposal, in our opinion, sets the bar too low. Notices under section 80 are only necessary where there is an imminent drinking water health hazard. These notices are meant to be used where there is an immediate emergency. Interim order authority under section 48 can be used to manage risk in the interim period.

We can’t forget that there are also other provincial statutes that enable the province to deal with threats to drinking water: for example, the Ontario Water Resources Act.

The Chair: Those in favour of NDP motion 178?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Kular, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

PC motion 179.

Ms. Scott: I move that subsection 80 (1) of the bill be amended by striking out “notify the ministry” and substituting “notify the ministry and the medical officer of health for the affected area”.

The Chair: Commentary?

Mr. O’Toole: This was actually quite a specific one, because in the Walkerton situation one of the problems was the failure to notify the medical officer of health in a timely manner. There was an amendment made under the NDP, which formed the Ontario Clean Water Agency, which confused the reporting mechanisms, whether it was the operator at the plant or the medical officer of health who had a duty to inform. I think this clarifies that, and I would ask in a friendly way for the government to adopt this friendly amendment.

Mr. Wilkinson: Under this bill people are not relieved of their legal obligation to notify the Spills Action Centre or the Ministry of the Environment when they are of the opinion that a deleterious substance has entered into a watercourse. This motion would not provide the local medical officer of health with any authority to take action as a result of being notified. The medical officer of health does not normally deal with discharges to the natural environment; the MOE does. The section should not require the notification of the local medical officer of health as in the case of the Safe Drinking Water Act where, under that statute, the local medical officer of health is given authority to direct what corrective action—for instance, the local officer of health may issue a boil-water advisory—should be taken where there is a report of an adverse test result in relation to a drinking water system. The ministry, though, I can tell you, plans to put in place a procedure to ensure that the medical officer of health is consulted about any follow-up action the ministry takes in response to a notice.

The Chair: Any further comments? Those in favour of PC motion 179? Those opposed? Defeated.

Government motion 180.

Mr. Wilkinson: I move that subsection 80(1) of the bill be struck out and the following substituted:

“Notice of health hazard

“80(1) A person who has authority to enter property under sections 54 or 79 shall immediately notify the ministry in accordance with the regulations if,

“(a) the person becomes aware that a substance is being discharged or is about to be discharged into the raw water supply of,

“(i) an existing municipal drinking water system that serves a major residential development, or

"(ii) any other existing drinking water system that was considered or is required to be considered in an assessment report or source protection plan; and

"(b) the person is of the opinion that, as a result of the discharge, an imminent drinking water health hazard exists."

The Chair: Those in favour of government motion 180? Those opposed? Carried.

NDP motion 181.

Mr. Tabuns: I move that section 80 of the bill be amended by adding the following subsection:

"Ministry action

"(1.1) The ministry shall, within 30 days after receiving a notice under subsection (1), take action intended to ensure that,

"(a) the drinking water health hazard is eliminated, if the notice was given under clause (1)(a); or

"(b) the raw water supply of the drinking water system meets all standards prescribed by the regulations, if the notice was given under clause (1)(b)."

This requires the ministry to act within 30 days, not just send out a notice saying what they've done.

The Chair: Commentary? Those in favour of NDP motion 181?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 182.

Mr. Tabuns: I move that subsection 80(2) of the bill be amended by striking out "any action taken by the ministry" in the portion before clause (a) and substituting "the action taken by the ministry".

We don't just want them to be required to take a vague action; we want them to be reporting on corrective action that's been taken.

The Chair: Commentary? Those in support of NDP motion 182?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 80, as amended, carry? Carried.

Shall section 81 carry? Carried.

Government motion 183.

Mr. Wilkinson: I move subsection 82(1) of the bill be amended by striking out "a permit official or a permit inspector" and substituting "a risk management official or a risk management inspector".

The Chair: Any further commentary? Those in favour? Those opposed? Carried.

Shall section 82, as amended, carry? Carried.

PC motion 184.

Ms. Scott: I move that that section 83 of the bill be amended by adding the following subsection:

"Expropriations Act applies

"(2) Nothing in subsection (1) affects the application of the Expropriations Act to any action taken under that subsection."

Reference to all expropriations under this act accompanied by fair compensation.

The Chair: Any further commentary?

Mr. Wilkinson: Section 83 is already subject to the Expropriations Act.

The Chair: Those in favour of PC motion 184? Those opposed? Lost.

Shall section 83 carry? Carried.

Shall section 84 carry? Carried.

NDP motion 185.

Mr. Tabuns: I move that section 85 of the bill be amended by adding the following subsections:

"Limitation

"(2) The minister shall not grant an extension of time under subsection (1) unless,

"(a) the person requesting the extension of time has applied in writing to the minister for the extension and has provided reasons in support of the request;

"(b) the person requesting the extension of time has given notice of the request to the public and an opportunity has been provided for submitting comments to the minister; and

"(c) the minister is satisfied that an extension of time is in the public interest and is necessary in order to achieve the purposes of this act.

"Minister's authority

"(3) In granting an extension of time under subsection (1), the minister may specify such further deadlines or impose such terms as the minister considers advisable.

"Maximum extension

"(4) The minister shall not grant an extension of time under subsection (1) for a period that exceeds one year."

This puts a time limit on extensions so that they cannot go on indefinitely and requires the minister to be open about why the extension has been given and gives the public an opportunity to comment on these extensions.

The Chair: Commentary? Those in favour of NDP motion 185?

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 85 carry? Carried.

Shall sections 86 and 87 together carry? Carried.

Government motion 186 was presented by Minister Broten to be voted on. We'll now proceed to government motion 187.

Mr. Wilkinson: I move that clause 88(1)(d) of the bill be amended by striking out "permit official" and substituting "risk management official".

The Chair: Commentary? Those in favour of government motion 187? Those opposed? Carried.

PC motion 188.

1450

Ms. Scott: I move that section 88 of the bill be amended by striking out subsection (6).

The Chair: Commentary?

Mr. O'Toole: Section 88 is a fairly onerous section. As far as I can see here, there's no liability on the part of the officials. Is that what that means? In terms of liability of a person making a wrong judgment or assessment, it says, "No costs, compensation or damages are owing or payable to any person and no remedy, including but not limited to a remedy in contract, restitution, tort or trust, is available to any person, in connection with anything referred to" in these sections.

I just want to make sure that there is some access to justice when somebody in this area makes a mistake.

Mr. Wilkinson: As I mentioned earlier, there was all-party support, including your own voting record in regard to the Oak Ridges Moraine Conservation Act, which this is modelled after. That was the situation in 2001 where you thought that this was acceptable and you said that there was a fund for the Oak Ridges that was set up. I know we've done this with all-party agreement to set up the stewardship fund. So I would think the situation is identical.

My sense of it from the stakeholders I've talked to is that they feel that the bill has struck the appropriate balance. We appreciate the support that we received from the opposition on the enshrinement of the Ontario drinking water stewardship fund.

Mr. O'Toole: I have no problem with that. I just want to make sure that there is, in all cases, a mechanism for redress and appeal. If I go down to subsection (5) of that, it says, "Any proceeding referred to in subsection (3) commenced before the day that subsection comes into force shall be deemed to have been dismissed, without costs...." This is the retroactivity issue. In other words, if there's any legal action in process when this thing comes into force, it's all null and void. There's no redress at all. "No expropriation or injurious affection": We deal with this in one of our amendments. "Nothing done or not done in accordance with this act or the regulations, other than an expropriation under section 83, constitutes an expropriation...." In other words, there's no place to move. There's no place to run and hide for anyone except the government. The government can have made a mistake, poorly assessed a situation, and there's no access to justice for the individual, the farm, the small community, the municipality by some action. That whole section deals with that.

I know that 87, which we supported, sets up a little fund. I think you said that there's about \$5 million probably, at least at this point in time.

Mr. Leal: It's \$7 million, and growing.

Ms. Scott: And growing. There's more now?

Mr. O'Toole: Oh, there's more money.

Interjection.

Mr. O'Toole: So you're going to have to amend that.

Mr. Wilkinson: No, no.

Mr. O'Toole: The ministry estimates start tomorrow. We should get that to the—

Mr. Wilkinson: In the 2007-08 budget. We haven't got to that one yet, have we? We're in 2006-07.

Mr. O'Toole: I think you get what I'm talking about, respectfully. Is there any access to redress through the courts for lack of due diligence?

Mr. Wilkinson: I would ask Mr. Flagal to answer that question.

Mr. Flagal: My name is James Flagal. I'm with the Ministry of the Environment, legal services branch.

You have to remember that there's section 88 and then section 89. The reason why I say that is because section 89—if you're thinking in your mind about when a risk management official or a risk management inspector has been negligent on a property, for instance, no, that's not what 88 is meant to provide protection for. That's why 89 is there.

Section 89 is very similar to other protection from liability provisions you see, like in the Environmental Protection Act, the Building Code Act. When you look at 89, it means that if you have an inspector or an official who is doing their job—for instance, they're making a decision that they have to require a risk management plan under section 50—that would be subject to the same standard, meaning they could be subject to regulatory negligence suits, as an example, just as the case is right now with respect to municipal officials when they're acting under other statutory legislation, like the Municipal Act, as an example. That is why section 89 is there. You should not read section 88 in isolation.

There's one instance where the risk management official, risk management inspector, is protected from liability, including the municipality. That is during the interim period. So during the interim period—and when I'm talking about that, I'm sorry, I'm talking about section 48 risk management plans. One of the things is, it was identified that during the interim period, before the source protection plan takes effect, for taking early action during that time, those decisions would be protected from liability under section 88. But after the source protection plan comes into effect, it's section 89 that applies. That is similar to other standards that are in legislation, protection from liability, that you see in the Building Code Act, the Environmental Protection Act etc.

Mr. O'Toole: That's great. I appreciate that, because if you look at 89, you'd have to almost define "any act in good faith." That's the legal term, "done in good faith." Perhaps the training you mentioned earlier was inappropriate for the complex issues that they're dealing with. I

don't want to make more out of it. I just don't think that it's clear enough. Entry to property, immunity from prosecution—all these things bundled together in these three sections, almost from 79 to about 89, almost build a wall around—

Mr. Flagal: But entry to property is not covered in 88. If there was an entry to property and an official was negligent, just like under other existing statutes, if the official acted in good faith they're protected personally, but for that tort you can go after the employer or their principal. That's the case under the Municipal Act right now, or the Building Code Act.

Mr. O'Toole: I think I've made my point. Thank you very much for the technical response.

The Chair: If there's no further commentary, we'll proceed to the vote. Those in favour of PC motion 188?

Mr. O'Toole: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Item 189 is a PC notice, of which we take due note.

Shall section 88, as amended, carry?

Ms. Scott: Recorded vote.

Ayes

Kular, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Scott.

The Chair: Carried.

Government motion 190.

Mr. Wilkinson: I move that paragraphs 1 and 2 of subsection 89(1) of the bill be struck out and the following substituted:

"1. Risk management officials.

"2. Risk management inspectors."

The Chair: Any further commentary? Those in favour of government motion 190? Those opposed? Carried.

Shall section 89, as amended, carry? Carried.

New section, 89.1, PC motion 191.

Mr. O'Toole: It's out of order. I just want to put on the record here that I appreciate the government respecting the work done by Ms. Scott, as well as John Tory. Setting up the stewardship fund was the right thing to do, and I would expect that you would have supported our motion. You copied—like the NDP; you've copied many of their amendments.

Ms. Scott: But we do ask in our motion that there would be full funding awarded to the costs associated with the bill.

The Chair: Are you withdrawing the motion at this time?

Ms. Scott: Do we have to withdraw it?

The Chair: If you'd like to read it—it will be ruled out of order, but you do have the opportunity to read it.

Ms. Scott: All right, then; I'll read it. I move that the bill be amended by adding the following section:

"Stewardship fund

"89.1(1) In order to ensure that landowners are confident that they will be compensated for additional costs they incur under this act and in the public interest, the minister shall create a separate account, referred to as the stewardship fund, in the consolidated revenue fund.

"Special purpose account

"(2) For the purposes of the Financial Administration Act, money deposited into the stewardship fund is deemed to be money paid to Ontario for a special purpose.

"Payments out of fund

"(3) The minister may direct that money be paid out of the stewardship fund for the following purposes:

"1. To compensate landowners and other persons or bodies for any additional costs they incur as a result of actions they take resulting from anything arising under this act.

"2. To provide financial assistance to persons or bodies who undertake projects to protect existing and future sources of drinking water.

"3. Such other purposes as are prescribed by regulation."

Can we have a recorded vote, please?

1500

The Chair: The motion is out of order and therefore dismissed. Shall section 90 carry?

Mr. O'Toole: I'm going to question that ruling of the Chair, and I'll tell you why: We're actually calling for full funding, and you're not near covering that. So I don't think this is redundant; I think, in fact, it's asking you to strengthen—

The Chair: It's out of order, sir, under standing order 56, money bills. Shall section 90 carry? Carried.

PC motion 192.

Ms. Scott: I move that subsection 91(3) of the bill be struck out and the following substituted:

"Exception

"(3) Subsection (1) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be."

The Chair: Thank you. Any further commentary? Those in favour of PC motion 192? Those opposed? Defeated.

PC motion 193.

Ms. Scott: I move that subsection 91(5) of the bill be struck out and the following substituted:

"Non-application of subs. (4)

"(5) Subsection (4) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit."

These amendments are brought forward to eliminate the reversal in this section of this bill.

The Chair: Commentary? Those in favour of PC motion 193? Those opposed? Defeated.

Government motion 194 is a notice, of which we take note.

Shall section 91 carry? The section is lost.

Shall section 92 carry? Carried.

Government motion 195.

Mr. Wilkinson: I move that section 93 of the bill be struck out and the following substituted:

“Proof of certain documents

“93. A copy of a document that purports to be certified by the minister, the director or a risk management official as a copy of any of the following documents shall be received in evidence as proof, in the absence of evidence to the contrary, of the document and of the facts certified, without proof of the signature or office of the person who signed the certification:

“1. A source protection plan in respect of which notice has been published under section 27.

“2. An assessment report that has been approved by the director.

“3. An order issued under part IV.

“4. A risk management plan that has been agreed to or established under section 48 or 50.”

The Chair: Any further commentary on government motion 195? Seeing none, those in favour of government motion 195? Those opposed? Carried.

Shall section 93, as amended, carry? Carried.

Government motion 196.

Mr. Wilkinson: I move that section 94 of the bill be struck out and the following substituted:

“Proof of facts stated in certain documents

“94(1) A document described in subsection (2) that purports to be signed by the minister, the director, a risk management official or a risk management inspector shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the document without proof of the signature or position of the person appearing to have signed the document.

“Application

“(2) This section applies to the following documents:

“1. A certificate as to service of a notice given under part IV.

“2. A certificate as to whether or not any document or notice was received or issued by the minister, the director, a risk management official or a risk management inspector.

“3. A certificate as to the custody of any book, record or report or as to the custody of any other document.”

The Chair: Any further commentary? Those in favour of government motion 196? Those opposed? Carried.

NDP motion 197.

Mr. Tabuns: I move that subsection 96(1) of the bill be amended by striking out “a regulation made under another act” and substituting “a regulation or instrument made, issued or otherwise created under another act”.

I have to say that, given that the government has a motion after mine that is identical, I assume that they find my motion both satisfactory and maybe sparkling and wonderful.

Mr. Wilkinson: It's all of those things.

Mr. Tabuns: It's all of those things. So I'm assuming that they and other colleagues will vote in favour of this amendment, which will make our day a little brighter all around.

Mr. Wilkinson: Recorded vote.

Ayes

Kular, Leal, O'Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed. Carried.

Government motion 198, as a duplicate, is out of order.

PC motion 199.

Ms. Scott: I move that subsection 96(2) of the bill be struck out and the following substituted:

“Nutrient Management Act, 2002

“(2) Despite subsection (1), if there is a conflict between a provision of this act and a provision of the Nutrient Management Act, 2002 or a regulation or instrument made, issued or otherwise created under that act, the provision of that act or the regulation or instrument made, issued or otherwise created under that act prevails.”

Mr. Wilkinson: On a point of order, Mr. Chair: I believe we missed—

Interjection.

Mr. Wilkinson: Okay. So we'll stick on this and we'll come back to it? I believe 94 and 95—

The Chair: Shall section 94, as amended, carry? Carried.

Shall section 95 carry? Carried.

Ms. Scott, please proceed with PC motion 199.

Ms. Scott: I did already. Is that okay?

The Chair: Further commentary?

Mr. Wilkinson: Yes, Mr. Chairman. In the government's opinion, the motion is inappropriate, as the Nutrient Management Act is not intended to directly protect sources of drinking water. That is why section 96 provides that in every case of a conflict with the Nutrient Management Act, the act would prevail, because this legislation will always be more protective of drinking water than the Nutrient Management Act. That doesn't mean that the Nutrient Management Act is more appropriate than the Clean Water Act, but there will never be a case to the contrary, which is what you're arguing. We have to have primacy, and we would not put the Nutrient Management Act with primacy over the Clean Water Act when we say that it's the Clean Water Act or any other act that has—whatever one does the best job. I think it's wrong to assume that the Nutrient Management Act in every case would be the best way to protect drinking water, and that's why we can't vote for the amendment.

Mr. O'Toole: This is another case where they're required—I think they have to apply under a nutrient management plan at a large number of animal units at the moment, but as it works its way down the system, they have to have a plan. They have to get a scientist to do that. They submit the plan to the MOE and it's approved. Now, if it's approved and subsequently we find, through technology, science and modernization, that that nutrient management plan, whether the land-based side or treatment or making biomass, using it for energy or something, changes somewhat—do you understand what I'm saying?—they may not be in compliance with the act under this particular source water protection plan. They could be in conflict.

These are the kinds of things that I don't think there's a proper dispute mechanism for. Agriculture is under siege now. The Nutrient Management Act, the large animal units and all this, is working its way down. There's no funding for it, or insufficient, if anything. I think the point that Ms. Scott is making is to provide some certainty for the investment they made. If you come in and change the rules after the game has started, they want to be in compliance, but they've already spent the \$50,000. Do you follow me? The government should be providing help to them to achieve—

Mr. Wilkinson: Is there a question there?

Mr. O'Toole: Yes. Are they willing to provide financial support to be in compliance with the highest possible standard?

Mr. Wilkinson: Well, perhaps you missed a bit of history. I know that when the Nutrient Management Act was brought in by your government, there wasn't funding.

Mr. O'Toole: Yes, there was.

Mr. Wilkinson: There was a promise, but an unstated member—I remember my good friend Helen Johns running all over this province trying to duck that question. What our government did was provide that funding, much, I think, to the relief of the agricultural community.

Let's just be clear: Let alone that we put money into nutrient management, something that you talked about but you actually didn't do and left us to do and to find that money, I think we have to be very careful. The Nutrient Management Act is all about making sure that nutrients are applied in a scientifically based way so that farms themselves are sustainable. That's what nutrient management was about. It wasn't supposed to be the Clean Water Act; it was about the management of nutrients.

Your point is, what is the relationship between those two bills? What we say is that we will not allow the Nutrient Management Act, which is not designed specifically, when it is to deal with the application of nutrients, to protect sources of drinking water, when we have the Clean Water Act. But I say to you that if the nutrient management plan that a farmer already has does a sufficient job of ensuring that there is no significant threat to drinking water, this act will recognize that and allow that to be the way of dealing with it. So we're

willing to go the one way, and I think that is reasonable, but we're not willing to go the other way: throw the baby out with the bathwater and somehow think that a nutrient act is going to protect our sources of drinking water in every instance. If it does, it does, but if it doesn't, it's the Clean Water Act that shall prevail.

1510

Mr. O'Toole: Yes, well, I hear what you're saying, and I don't think I'm being out of order by suggesting that the Nutrient Management Act, in our case—first of all, you're incorrect. It was still in the regulation stage there. You committed to fund all three, and haven't. In fact, you changed the regulations and the implementation plan. I think you've allocated \$60 million or something—

Mr. Wilkinson: Because agriculture asked us to.

Mr. O'Toole: —to the 300-animal-unit level.

Mr. Wilkinson: That is very well received.

Mr. O'Toole: So we won't go down that road, because that is another broken promise. You want to be on record here—

Mr. Wilkinson: We were happy that we fixed your mistake.

Mr. O'Toole: You brought it up. You haven't got the plan fully implemented at all and, quite frankly, that is your record. You aren't even near, but—

Mr. Wilkinson: Oh, I'll be on the campaign trail about the Nutrient Management Act any time, any place, anywhere in rural Ontario if you want to go with that one.

Mr. O'Toole: Well, good luck. You haven't got it working except for the large animal units.

Mr. Wilkinson: They always remember who came up with that bill.

Mr. O'Toole: Funding for manure storage and handling facilities—

The Chair: Gentlemen, I would invite you, Mr. O'Toole and Mr. Wilkinson, to speak one at a time for the purposes of recording for Hansard in order to immortalize your words.

Mr. O'Toole: Thank you very much for that. Thank you for coming to my defence, Chair. It's good to see your neutral position on this debate here. Anyway, we'll let that go. We've made our point. We'll lose the vote anyway, because you won't support agriculture and you won't support us in our attempt to support agriculture here.

Mr. Wilkinson: Mr. Chair, I'm so happy that in regard to this bill the Ontario Federation of Agriculture has a difference of opinion with the member for Durham.

The Chair: Those in favour of PC motion 199? All opposed? Defeated.

PC motion 200.

Ms. Scott: I move that section 96 of the bill be amended by adding the following subsection:

"Same

"(3) Nothing in this act shall be more onerous or duplicate anything required or done under the Nutrient Management Act, 2002."

It follows a similar amendment, that there isn't a need to duplicate the processes under the Nutrient Management Act.

Mr. Wilkinson: There's no need to duplicate, but if there is a significant threat to drinking water and the Nutrient Management Act doesn't look after it, it's going to be the Clean Water Act that shall prevail. I'm surprised, actually, that you would suggest otherwise in your amendment.

The Chair: Thank you. If there is no further commentary, I'll proceed to the vote. Those in favour of PC motion 200? Those opposed? Defeated.

Shall section 96, as amended, carry? Carried.

NDP motion 201.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"No defence

"96.1 Nothing done to comply with this act, a source protection plan, or a rule, regulation or instrument under this act may be relied on as a defence in any prosecution for an offence under any other act the purpose of which is to protect the environment."

In the course of the presentation by Lake Ontario Waterkeeper—it was a while ago, a few weeks ago on a Monday here in this room—they were very concerned that this act had the potential to set a standard lower than one set in the Environmental Protection Act or the Ontario Water Resources Act. One of their concerns was that a person or corporation or entity operating within the framework of a risk management plan approved by the government of Ontario, by the source protection committee, may use the fact that they are operating within that plan as a due-diligence defence in court should they be out of compliance with or should they break another act. They were concerned that they had in fact come across such cases in the past where compliance with one environmental law that in a particular situation set a lower standard allowed a winning defence in a case where damage was done to the environment.

So, in order to eliminate that due-diligence defence, particularly given that the standard is a "significant" threat to water rather than "drinking water threat," we are putting forward this amendment. We think it is necessary to ensure that no one will be able to use, at times, that standard set in a source protection plan to protect themselves against action against other acts.

The Chair: Thank you. Further commentary?

Mr. Wilkinson: I distinctly remember the presentation that you referenced. I know I'm not a lawyer, but I believe the comments I made at that time were clear. Common law is very, very clear on this matter. If there is anyone under the misapprehension that they could use this act to justify that they don't have to comply, that is bizarre, just bizarre. I followed the argument and I was surprised by the argument itself. It struck me as bizarre. I then subsequently talked to our legal people.

There's no suspension of common law because we're passing the Clean Water Act. There is no defence that you can have due diligence to say, "Oh, yes, because of

the Clean Water Act, because of my interpretation of it, I have the right to go and dump a deleterious substance into a watercourse." We have all of these other laws. They can't just be taking this out of context.

The common law is the common law, and the courts have been very, very clear about this. I was mystified by the concern raised, as to the validity of the concern raised, because it just seemed to be stretching almost to the absurd how one could even connect those dots. I think my testimony at the time was quite clear. The common law applies, unless there's something I'm missing here.

Mr. Tabuns: I think we're going to disagree on this point.

Mr. Wilkinson: I hope you're never a defence lawyer.

The Chair: Those in favour of NDP motion 201?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Leal, Ramal, Wilkinson, Wynne.

The Chair: Government motion 202.

Mr. Wilkinson: I move that subsections 97(1), (2) and (3) of the bill be struck out and the following substituted:

"Offences

"97(1) Every person who contravenes subsection 49(1) or 50(1) is guilty of an offence.

"Same

"(2) Every person who fails to comply with an order made under section 53.1 or 55 is guilty of an offence.

"Same

"(3) Every person who fails to comply with an order made under subsection (9) is guilty of an offence."

This motion is merely to remove the references to permits, for greater clarity, given the package of amendments in regards to permits versus risk management.

The Chair: Thank you. Further commentary? Seeing none, we'll proceed with the vote. Those in favour of government motion 202? Those opposed? Carried.

Government motion 203.

Mr. Wilkinson: Mr. Chair, I move that paragraph 2 of subsection 97(9) of the bill be struck out and the following substituted:

"2. An order requiring the person, within the period or periods specified in the order, to comply with an order under part IV or a risk management plan agreed to or established under part IV."

The Chair: Further commentary? Those in favour of government motion 203? Those opposed? Carried.

Government motion 204.

Mr. Wilkinson: I move that paragraph 2 of subsection 97(11) of the bill be amended by striking out "a permit

official, a permit inspector” and substituting “a risk management official, a risk management inspector”.

The Chair: Commentary? Those in favour of government motion 204? Those opposed? Carried.

Shall section 97, as amended, carry? Carried.

NDP motion 205.

Mr. Tabuns: Withdrawn.

The Chair: Thank you. Shall section 98 carry? Carried.

Government motion 206.

Mr. Wilkinson: Mr. Chair, I move that section 99 of the bill be amended by adding the following clauses:

“(j.1) governing the number of members of source protection committees;

“(m) governing the operation of source protection committees.”

The Chair: Any further commentary or debate? Seeing none, those in favour of government motion 206? Those opposed? Carried.

Shall section 99, as amended, carry? Carried.

Government motion 207.

Mr. Wilkinson: I move that subclause 100(1)(a)(ii) of the bill be struck out and the following substituted:

“(ii) governing consultation during the preparation of terms of reference, assessment reports and source protection plans,”

This is a motion made for clarification.

The Chair: Thank you. Any further commentary? Those in favour of government motion 207? Those opposed? Carried.

Government motion 208.

Mr. Wilkinson: I move that subsection 100(1) of the bill be amended by adding the following clause:

“(a.1) governing the amendment of terms of reference under section 11.1, including, for the purpose of subsection 11.1(1), prescribing the circumstances in which a source protection committee may propose amendments under that subsection;”

The Chair: Further commentary? Those in favour of government motion 208? Opposed? Carried.

Government motion 209.

Mr. Wilkinson: I move that clause 100(1)(f) of the bill be amended by striking out “preparation” and substituting “preparation and content”.

1520

The Chair: Those in favour of government motion 209? Those opposed? Carried.

Government motion 210.

Mr. Wilkinson: I move that clauses 100(1)(i) and (j) of the bill be struck out and the following substituted:

“(i) resolving conflicts between the provisions of significant threat policies and designated Great Lakes policies set out in source protection plans and the provisions of plans and policies mentioned in subsection 35(5), including determining which provisions prevail or how the plans or policies must be modified to resolve the conflict;

“(j) governing and clarifying the application of subsections 35(7), 38.1(1) and 39(1), including determining

when a prescribed instrument does not conform with a significant threat policy or designated Great Lakes policy set out in a source protection plan for the purpose of those subsections, and determining the nature of the non-conformity;

“(j.1) dealing with any problems or issues arising as a result of the application of subsections 35(7), 38.1(1) and 39(1);

“(j.2) resolving any non-conformity between provisions of prescribed instruments and provisions of significant threat policies and designated Great Lakes policies set out in source protection plans, including determining how prescribed instruments must be amended to resolve the non-conformity;”

The Chair: Any further commentary? Those in favour of government motion 210? Those opposed? Carried.

Government motion 211.

Mr. Wilkinson: I move that subsection 100(1) of the bill be amended by adding the following clause:

“(k.1) governing the provision of financial assistance under subsection 87.1(2);”

The Chair: Those in favour of government motion 211? Mr. O'Toole, you have a comment?

Mr. O'Toole: Could you clarify that? This is governing the provision of financial assistance?

Mr. Wilkinson: Yes. This motion was made to add regulation-making authority with respect to providing financial assistance under the stewardship program. This amendment is complementary to the motion adding section 87.1 of the bill and allows it to be fully implemented, assuming that we would have all-party support.

The Chair: Any further commentary?

Mr. Leal: Recorded vote.

Ayes

Kular, Leal, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: Carried.

Government motion 212.

Mr. Wilkinson: I move that clause 100(1)(l) of the bill be amended by striking out “by-laws under section 142 of the Municipal Act, 2001” and substituting “by-laws referred to in section 142 of the Municipal Act, 2001 or section 105 of the City of Toronto Act, 2006”. That's for clarity.

The Chair: Commentary? Those in favour of government motion 212? Those opposed? Carried.

Government motion 213.

Mr. Wilkinson: I move that clause 100(1)(m) of the bill be amended by striking out “set out in section 142 of the Municipal Act, 2001” and substituting “referred to in section 142 of the Municipal Act, 2001 or section 105 of the City of Toronto Act, 2006”. Same reason.

The Chair: Any further commentary? Those in favour of government motion 213? Those opposed? Carried.

Government motion 214.

Mr. Wilkinson: I move that clause 100(1)(n) of the bill be amended by striking out “permit official or permit

inspector" and substituting "risk management official or risk management inspector".

The Chair: Any further commentary? Those in favour of government motion 214? Those opposed? Carried.

Government motion 215?

Mr. Wilkinson: I move that clause 100(1)(q) of the bill be amended by striking out "groundwater recharge area" and substituting "significant groundwater recharge area".

That is to make the bill consistent with previous amendments.

The Chair: Commentary? Those in favour of government motion 215? Those opposed? Carried.

Government motion 216.

Mr. Wilkinson: I move that section 100 of the bill be amended by adding the following subsections:

"Use of work produced by municipality

"(3.1) A regulation under clause (1)(a) governing the contents of assessment reports or source protection plans may govern the use by the source protection committee of anything that is produced by a municipality pursuant to a provision in the terms of reference that requires the municipality to perform tasks set out in the terms of reference.

"Remediation plans

"(3.2) A regulation under clause (1)(f) may require a risk management plan to contain provisions dealing with the remediation of adverse effects caused by the activity to which the plan relates."

The Chair: Any further commentary? Mr. O'Toole.

Mr. O'Toole: Yes. Who would actually own those? If the municipality had done work and had these studies done, would they own the material, the information, and would the government be prepared to reimburse them for time and staff and talent?

Mr. Wilkinson: I could say to my friend that the Association of Municipalities of Ontario, in addition to several individual municipalities that came before us, wanted limitations placed on the source protection committee's ability to change or alter municipal work, municipal portions of the assessment reports and source protection plans.

This motion addresses that concern, and it is to provide regulation-making authority to allow regulations to be made outlining how work prepared by the municipalities pursuant to the terms of reference should be used in the preparation of assessment reports and source protection plans. This motion also provides regulation-making authority to make regulations requiring that risk management plans contain remediation provisions.

I believe what we're talking about is different from the question you are asking, so I'm missing it.

Mr. O'Toole: Well, I honestly think that there is quite a bit of interaction between current authorities—that's conservation authorities—that are municipally funded by and large. And the boards are municipal councillors, technically. As such, they could be doing work that really the municipality is using as part of subdivision plans etc.

The point I'm making is that if the government is going to now dictate that they share those, to say, "We've got this plan in place"—it's a very technical bill. For them to say, "We have this area, this watershed," and there may be three or four municipalities, some of which are further along in doing some of the preliminary work—I guess the province will own all this material.

Mr. Wilkinson: I think in previous amendments people have a requirement to provide to the source planning committee the data required for them to do the work, and that's wise in the sense that we don't want people to spend a lot of money reinventing the wheel if those data already exist. So I would believe the data would be held for the common good by the source planning committee, because it is empowered by this act to do something that we all agree is in the public good, which is the protection of drinking water.

So, to me, the municipalities were well within their rights to address to all of us, particularly to the government, their concerns about liability, and I think their anxiety that perhaps some of the work that they had already done—as you said, Mr. O'Toole, maybe even more advanced—would somehow be ignored and they would be forced to redo this work.

So this does make sure that municipalities that have done the work—I think of the county of Oxford and the region of Waterloo—and if that material is out there, that is something that can be used to inform of the work that is done by the municipalities as they work collegially with their neighbours to create the source planning committee.

Mr. O'Toole: Is there any estimate at all anywhere that could be tabled in this committee of what these assessment plans for this huge province of Ontario are going to be, to do all this necessary due diligence across the province, from Manitoba to Quebec—

Mr. Wilkinson: I had the advantage of going out and spending five days on committee as the parliamentary assistant, and I can tell you that probably the best number that we were able to see, from practical experience, was the county of Oxford. They believe that their implementation cost was about \$1.65 per household per month over a 10-year period. We asked them, and people questioned them quite extensively—I think we were in Walkerton—about how realistic they thought that number was. We asked similar questions to the region of Waterloo, also in a very complicated watershed. They thought their costs were in the neighbourhood of 75 cents per household per month.

Again, we can't jump ahead of the science. The province has uploaded the entire cost of doing the scientific work with money provided by both the Ministry of the Environment and the Ministry of Natural Resources. That work is going on, and, to get a real handle on what the cost and any potential hardship would be, we have to wait for that work to be done. But that doesn't mean that we do not need to, right now, move forward with this bill to create the framework so that that work actually comes to life in a system wherein people who share the same

sources of drinking water come together to protect them and keep them safe.

Mr. O'Toole: So is this coming in as part of the budget, like a new tax, sort of like the health tax?

Mr. Wilkinson: As I mentioned to you before, I've only been here three years; I don't answer speculative questions from my good friends in the opposition when it comes to issues, particularly around money. Oh, yes, I can just think of the call from the Minister of Finance I would receive on that. So thanks for asking the question, but I think the well is dry over here to try to get an answer on that one.

1530

The Chair: Those in favour of government motion 216? All opposed? Carried.

Government motion 216.1.

Mr. Wilkinson: I move that section 100 of the bill be amended by adding the following subsection:

"Drinking-water systems that serve reserves

"(3.3) A regulation may not be made under clause (1)(s) that prescribes, for the purpose of subclause 13(2)(e)(iv), a drinking-water system that serves or is planned to serve a reserve as defined in the Indian Act (Canada), unless the minister has received a resolution of the council of the band, as defined in that act, requesting that the minister recommend to the Lieutenant Governor in Council the making of the regulation."

In explanation, this motion is made to limit the regulation-making authority of the Lieutenant Governor in Council to make a regulation adding a First Nation drinking water system to the source protection planning process. A regulation adding a First Nation system cannot be made unless the minister has received a resolution of the council of the First Nation requesting that the regulation be made. We are very happy to be able to move this government motion to provide greater clarity.

The Chair: Any further comments on 216.1?

Mr. O'Toole: Just a clarification there for me, anyway: I guess if there's anything done on a reserve that's in the overall plan for a risk management plan that falls within a reserve area, the band has to pass a resolution or a band motion with respect to that. Is that it?

Mr. Wilkinson: Just give me one second so we're clear. Just so we're absolutely clear on this, I would ask perhaps Cynthia or Jamie to come forward. Now, this is Jamie Flagal. He is with the legal branch of the Ministry of the Environment.

Mr. O'Toole: That's excellent. When you do a Google search, you'll be in there.

Interjection: Spelled correctly.

Mr. Wilkinson: I'm with you, Jamie.

Mr. Flagal: There was a motion that has already been made and accepted by committee where in the assessment report it says the type of drinking water system that the assessment report has to consider—municipal residential systems, other systems the minister includes—plus, for systems that serve reserves, the LGIC could include them by regulation. What this does is put a constraint. It says the LGIC cannot make a regulation

unless the minister has received a resolution from the band council saying, "We want the system that serves our reserve to be included in the source protection planning process."

The issue that the member raised about the way that risk management plans may apply to First Nation reserves is just again a constitutional issue. It's like any piece of environmental protection legislation in the province. Yes, provincial laws of general application apply in reserves, but there are exceptions. When it comes closer to land use and that sort of thing, it's definitely federal legislation which applies, but those are the things that the courts grapple with all the time with respect to the enforcement of provincial environmental protection legislation. In other words, it's an evolving issue.

That's not what this is meant to address. This is meant to address when you can consider or when the source protection planning can consider First Nation drinking water systems. Okay?

Mr. Wilkinson: Great. Thank you.

Mr. O'Toole: No, I'm not finished there. Let's say the reserve is within a source protection area. I may not have listened carefully; I was looking through. Do you follow me? Now, in the area, most of it's a municipal area, but there's one small portion that falls within a reserve. That reserve may have a recharge area in it which does affect off-reserve properties. Do you follow me? If they have not written that they want to be inside the plan, does that matter?

Mr. Flagal: That's not what this provision is about. We need to go back again. This provision is about when a First Nation system can be considered as part of the source protection planning process.

One thing you have to remember is, how does a system get considered? When you look at the assessment provision, if it's a well, a wellhead area is going to be drawn around that well. Right? They talk about this thing as like a 25-year travel time. So the key thing is that if the First Nation sends a resolution to the minister and says, "We want our system to be protected by the source protection plan. We want a wellhead area delineated for the well that serves our First Nation reserve," then what would happen is, the LGIC could entertain making a regulation and then there would be an obligation, obviously, on the source protection plan to begin (1) delineating the wellhead area for the well, and then (2) following through the process, looking for the threats to that particular well and that sort of thing.

That's why in your question it's a different issue. It's more of a constitutional issue that is just characteristic of any provincial law. You could say the same thing about, how does the Ontario Environmental Protection Act apply on a reserve? Well, that's a complicated answer. This provision is just meant to deal with First Nation drinking water systems, when they can be included as part of the source protection plan.

Mr. O'Toole: Actually, most reserves, I can tell you, today are not covered by municipal regulations. I have in my riding all sorts of reserves that have built septic systems, and there are no permits, nothing. In fact, they

built the casino without a single building permit, well inspection. So I'm not sure exactly what you're saying. They come under federal regulations under the Indian Act. They don't comply with the municipal building code at all. Jeff Leal would know, because he has reserves in his riding as well. They could build 50 houses and never get one building permit, pay one cent of development charges or have one well or septic system inspected.

Mr. Wilkinson: Thanks for sharing that with us.

Mr. O'Toole: It's true.

Mr. Wilkinson: But I think what we're dealing with here—I could be wrong. I believe we're dealing with government motion 216.1, and probably the salient issue is, are we all in favour of this or are we opposed to it? That would be the question that I think should be posed, Mr. Chair.

Mr. O'Toole: I have to admit in public I don't understand it because, quite honestly, if there's a reserve in the middle of a watershed and it has a problem and they don't have to comply in any way—they can't come on the land for some governance reason to do any kind of assessments. I mean, you're a lawyer—

Mr. Flagal: That's not what this motion does.

Mr. O'Toole: I know that. You've told me that.

Mr. Wilkinson: It has nothing to do with that, and I think we're at 216.1.

Mr. O'Toole: Go ahead. Call the question on it. I don't have a problem with it.

The Chair: Are there any further comments? Those in favour of government motion 216.1?

Mr. O'Toole: Recorded vote.

Ayes

Kular, Leal, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: Carried.

Shall section 100, as amended, carry? Carried.

Shall section 101 carry? Carried.

PC motion 217.

Ms. Scott: I move that the bill be amended by adding the following section:

"Publication of proposed regulations

"101.1(1) Before a regulation is made or amended under this act, the ministry shall,

"(a) post the proposed regulation or proposed amendment to a regulation on a website for at least 150 days before proposed regulation or amendment is made;

"(b) directly contact all persons who have an interest in the proposed regulation or proposed amendment to a regulation before posting the proposed regulation or amendment on the website in accordance with clause (a); and

"(c) publish notice of the proposed regulation or proposed amendment to a regulation in a newspaper that has circulation throughout the province and in a newspaper that is circulated in the area that is most directly affected by the proposed regulation or amendment.

"Public hearings

"(2) At the request of any political party that is represented in the Legislature, a committee of the Legislature shall hold public hearings on any proposed regulation or any proposed amendment to a regulation made under this act and the hearings shall be for at least three days and, as determined by the committee, shall be held in appropriate locations across the province."

This was brought in to ensure that the very important regulations that will be following this bill are allowed adequate public scrutiny. That's why we mention the 150 days preceded by direct notification to appropriate stakeholder groups, preceded by notification published in the provincial press and appropriate regional papers as well as on the Internet, and this is called before public hearings at the request of one of the political parties.

1540

The Chair: Any commentary? Those in favour of PC motion 217? Those opposed? Defeated.

Shall section 102 carry? Carried.

NDP motion 218.

Mr. Tabuns: Redundant. Withdrawn.

The Chair: Government motion 219.

Mr. Wilkinson: I move that subsection 7(8.1) of the Building Code Act, 1992, as set out in subsection 103(7) of the bill, be amended by striking out "section 398 of the Municipal Act, 2001 applies, with" at the beginning and substituting "section 398 of the Municipal Act, 2001 or section 264 of the City of Toronto Act, 2006, as the case may be, applies, with".

That is to be in compliance.

The Chair: Any further commentary? Those in favour of motion 219? Those opposed? Carried.

Government motion 220.

Mr. Wilkinson: I move that subsection 103(9) of the bill, amending subsection 16(1) of the Building Code Act, 1992, be struck out and the following substituted:

"(9) Subsection 16(1) of the act is amended by striking out the portion before clause (a) and substituting the following:

"Entry to dwellings

"16(1) Despite sections 8, 12, 15, 15.2, 15.4, 15.9 and 15.10.1, an inspector or officer shall not enter or remain in any room or place actually being used as a dwelling unless,"

The Chair: Those in favour of government motion 220? Those opposed? Carried.

Shall section 103, as amended, carry? Carried.

Shall section 104 carry? Carried.

NDP motion 221.

Mr. Tabuns: I move that section 105 of the bill be struck out and the following substituted:

"Consolidated Hearings Act

"105. The schedule to the Consolidated Hearings Act is amended by adding the following:

"Drinking Water Act, 2006".

This is a sort of truth-in-advertising amendment. We have before us what's called the Clean Water Act. I know there was a lot of confusion on the part of the public when they came and made deputations: Is this municipal water? Is it all kinds of water? Well, we know that it's

drinking water. It's not the rest of the water supply. It's a fairly narrowly focused bill. To have it continue under the present name may well confuse some of those in the public who don't read the text of the bill. So I think it makes sense for us to proceed with an amendment to the title to reflect what we've really got on our hands.

Mr. Wilkinson: I say to my friend, the government has no intention of changing the name of the bill at this stage.

The Chair: Those in favour of NDP motion 221?

Mr. Tabuns: Recorded.

Mr. O'Toole: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 105 carry? Carried.

Government motion 222.

Mr. Wilkinson: I move that the English version of subparagraph 3.1 ii of subsection 34(1) of the Planning Act, as set out in section 106 of the bill, be amended by striking out "a sensitive ground water feature or a sensitive surface water feature" and substituting "a sensitive groundwater feature or a sensitive surface water feature".

It is a terminology change for clarity. One word was changed: "groundwater." I had to look at it twice myself.

The Chair: Thank you, Mr. Wilkinson. Those in favour of government motion 222? Those opposed? None. Carried.

NDP motion 223.

Mr. Tabuns: Section 106: I move that subparagraph 3.1 iii of subsection 34(1) of the Planning Act, as set out in section 106 of the bill, be amended by striking out "Clean Water Act, 2005" and substituting "Drinking Water Act, 2006".

All of you who were in the room when I spoke to my earlier amendments have heard the arguments. They still stand. I gather, so does the government's opposition. Recorded vote.

Ayes

O'Toole, Scott, Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 106, as amended, carry? Carried.

Shall section 107 carry? Carried.

Government item 224 is a notice, which we duly note.

Shall section 108 carry?

Interjection: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 109 carry? Carried.

NDP motion 225.

Mr. Tabuns: It's redundant at this point. We've had two votes on it. I think the record is clear.

The Chair: Formal withdrawal?

Mr. Tabuns: Yes.

The Chair: PC motion 226.

Ms. Scott: I'll try this one. I move that section 110 of the bill be struck out and the following substituted:

"Short title

"110. The short title of this act is the Municipal Source Water Act, 2005."

It has been brought forward by many presenters that the Clean Water Act, as it stands, is a misrepresentation of what the bill really does. A recorded vote, please.

Ayes

O'Toole, Scott, Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 110 carry? Carried.

Shall the title carry? Carried.

Shall Bill 43, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Yes.

I would like to thank all members of the committee and staff for their endurance and patience. This, I am told, is the bill that contained the most amendments in this, the first McGuinty mandate, and possibly in the history of parliamentary democracy.

Mr. O'Toole?

Mr. O'Toole: Thank you, Chair. I do appreciate the indulgence of the government as well as the staff who have been a valuable resource to the government, and also note that this is a bill that has been drafted through amendments. There are more amendments than there is content; a 35-page bill with 226 amendments. I'm amazed how they can draft this so quickly, on the fly, on such an important thing. I'm disappointed. But we all want safe, clean drinking water, certainly Ms. Scott and John Tory have assured me.

The Chair: Mr. Tabuns?

Mr. Tabuns: I want to thank you for efficient chairing, Mr. Chair, and the staff for giving us solid support.

The Chair: Thank you, sir.

This committee stands adjourned.

The committee adjourned at 1547.

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Ms. Cynthia Brandon, counsel, legal services branch,
Ministry of the Environment

Mr. James Flagal, counsel, legal services branch,
Ministry of the Environment

Mr. Ian Smith, director, drinking water program management branch,
Ministry of the Environment

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Official Report of Debates (Hansard)

Monday 30 October 2006

Journal des débats (Hansard)

Lundi 30 octobre 2006

**Standing committee on
social policy**

**Traditional Chinese
Medicine Act, 2006**

**Comité permanent de
la politique sociale**

**Loi de 2006 sur les praticiennes
et praticiens en médecine
traditionnelle chinoise**

Chair: Shafiq Qaadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 30 October 2006

Lundi 30 octobre 2006

*The committee met at 1005 in room 1.*TRADITIONAL CHINESE
MEDICINE ACT, 2006LOI DE 2006 SUR LES PRATICIENNES
ET PRATICIENS EN MÉDECINE
TRADITIONNELLE CHINOISE

Consideration of Bill 50, An Act respecting the regulation of the profession of traditional Chinese medicine, and making complementary amendments to certain Acts / Projet de loi 50, Loi concernant la réglementation de la profession de praticienne ou de praticien en médecine traditionnelle chinoise et apportant des modifications complémentaires à certaines lois.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, good morning. I call the standing committee on social policy to order. As you know, we're here to begin hearings on Bill 50, An Act respecting the regulation of the profession of traditional Chinese medicine, and making complementary amendments to certain Acts.

SUBCOMMITTEE REPORT

The Chair: I would invite one of the committee members to please enter into the record our subcommittee report. Dr. Kular, would you care to? Mr. Fonseca? I need the subcommittee report to be read into the record.

Mr. Peter Fonseca (Mississauga East): Do I have it, Mr. Chair? Yes.

Your subcommittee considered on Tuesday, October 24, 2006, and Thursday, October 26, 2006, a method of proceeding on Bill 50, An Act respecting the regulation of the profession of traditional Chinese medicine, and making complementary amendments to certain Acts, and recommends the following:

1. That the committee requests authorization for the House leaders to meet at the call of the Chair on October 30 and 31, 2006, for the purpose of considering this bill;

2. That, if authorized, the committee meet in Toronto on October 30 and 31, 2006, from 10 a.m. to 12 noon and 3:30 p.m. to 6 p.m., for the purpose of holding public hearings;

3. That the committee clerk, with the authorization of the Chair, post information regarding public hearings in English in the *Globe and Mail*, the *Toronto Star*, the *Toronto Sun* and the *National Post* on Saturday, October

28, 2006, and that an advertisement also be placed on the Ontario parliamentary channel and the Legislative Assembly Web site;

4. That members of the subcommittee forward contact information for groups and individuals who wish to be considered to make an oral presentation to the committee clerk's office by 12 noon on Thursday, October 26, 2006;

5. That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 10 a.m. on Monday, October 30, 2006;

6. That groups and individuals will be scheduled on a first-come, first-served basis from the committees branch database and list provided by members of the subcommittee until all spaces are filled;

7. That groups and individuals be offered 10 minutes for their presentation. This time is to include questions from the committee;

8. That the deadline for written submissions be 12 noon on Friday, November 3, 2006;

9. That a summary of presentations be prepared by the research officer by Monday, November 6, 2006;

10. That, for administrative purposes, proposed amendments be filed with the committee clerk by 5 p.m. on November 7, 2006;

11. That the committee meet for the purpose of clause-by-clause consideration on Tuesday, November 14, 2006; and

12. That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Thank you, Mr. Fonseca. Is there any debate on this particular subcommittee report? Seeing none, may I have a motion for its adoption? Those in favour? Any opposed? Adopted.

We'll now move to our scheduled hearings. I invite our first presenter. Ms. Martel.

Ms. Shelley Martel (Nickel Belt): On a point of order, Mr. Chair: I had asked Mr. Patten, who I know is going to be leading this on behalf of the government, if legal staff could be present this morning to provide me with clarification about a particular section of the bill, section 18. I'm wondering if we can do that now. I don't think it will take that long, but I think it's quite critical to people's understanding of the bill. If they are here, it would be helpful.

The Chair: Ms. Martel, if I might, with your permission, seek the guidance of the committee's will: We have about 30 people or so to present and I'd be very pleased to allow that, if you will allow us at lunchtime to reserve 10 minutes eating into our lunch, if that's okay. Is that the will of the committee?

Mr. Fonseca: At lunchtime?

The Chair: Is that suitable, Ms. Martel?

Ms. Martel: If we can sit 10 minutes longer to hear the last presentation at lunchtime, I'm agreeable to that.

The Chair: Actually, it was the other way around. I was going to allow the ministry staff to answer your question at lunchtime.

Ms. Martel: If I might, Chair, I think what the ministry tells us about this particular section will have an impact on a number of the presentations we're going to hear.

1010

The Chair: All right, let's proceed to that. Will the ministry people please come forward, and if you might very efficiently execute this.

Ms. Christine Henderson: Thank you, Mr. Chair. My name is Christine Henderson. I'm legal counsel with the Ministry of Health and Long-Term Care. Stephen Cheng is also here. He is a policy adviser to the ministry in this area of regulated health professions.

Ms. Martel: Thank you. My concern is on page 6 of the bill, section 18. Under that particular section, my understanding is that the government is amending the RHPA by revoking those provisions that allow anybody to perform acupuncture; and this section is adding the provisions about who can practise or perform acupuncture.

Ms. Henderson: That's correct.

Ms. Martel: The question I have has to do with subsection 2, "a person who is a member of a college." I am assuming that is a member of one of the regulated health professions.

Ms. Henderson: Exactly. "Members" are defined terms under the RHPA, as are "colleges," the health regulatory bodies that are the governing bodies for members.

Ms. Martel: And there are 23 of those?

Ms. Henderson: There are 23 health professions.

Ms. Martel: So we could be talking about a potential of 23 regulated health professions, members of whom could practise acupuncture?

Ms. Henderson: To answer that question, I think we have to have regard to the actual provision. It actually reads, "A person who is a member of a college" may perform acupuncture—I'm paraphrasing—"in accordance with the standard of practice of the profession and within the scope of practice of the profession." That puts some limitation on what that acupuncture service is for each member of a college who is providing acupuncture.

Ms. Martel: I have two questions about that. I went through the scope of practice of all of the regulated health professions. They're included in our binder, as well. If I read that, I couldn't tell who's allowed to practise acupuncture, because the word "acupuncture"

doesn't appear in anybody's scope of practice in their own legislation, be it the Nursing Act etc. Then we went through the standard of practice for acupuncture of a number of regulated health professions. Some were very fulsome—a college of chiropractic, physiotherapists, for example; others were not so fulsome.

So if I look at the scope of practice, I can't tell who can perform acupuncture, because this scope of practice doesn't mention that word, so I don't know what word I'm supposed to be looking for. If I look at the standard of practice, those vary greatly from one regulated health profession to another.

Ms. Henderson: As you may know, this exempting regulation may exempt a person or an activity from subsection 27(1) of the RHPA.

Subsection 27(1) says that only a member of a college who is authorized to perform a controlled act or, in the case of a delegation—can there be the performance of a controlled act.

The exempting regulation may exempt a person or an activity from that general rule. Currently, anyone in Ontario may perform acupuncture, which is a procedure performed below the dermis, as I understand it. While the term "acupuncture," as you've correctly stated, is not set out as a controlled act, it is currently in the exempting regulation providing for anyone to perform that service.

Again, this new amendment will revoke the existing provision allowing anyone to perform, and it puts the performance of the procedure within the regulatory college framework so that members who are subject to the complaints and discipline processes and who perform the procedure within the scope and the standard of the profession may perform it.

Ms. Martel: So it's up to the individual colleges to determine the standard by which they judge their members or the standard that they set for members who want to provide acupuncture?

Ms. Henderson: Yes—for acupuncture and for all other procedures that the members perform.

Ms. Martel: The government—

The Chair: I'm going to intervene, Ms. Martel, with respect, for a couple of reasons. As I mentioned, we have about 30 presenters today, and our legislative counsel and legislative research is available for any further clarification. As a point of fact, we haven't actually officially requested a full ministry briefing so I will, with indulgence, move ahead now.

CANADIAN ASSOCIATION OF ACUPUNCTURE AND TRADITIONAL CHINESE MEDICINE

The Chair: I invite our first presenter on Bill 50, the act to regulate traditional Chinese medicine, and that is Mr. James Yuan, president of the Canadian Association of Acupuncture and Traditional Chinese Medicine. Welcome, Mr. Yuan.

I will, with respect, just remind everyone of the procedure for today. Each individual, be it as a represent-

ative of an association or as a private citizen, will have 10 minutes in which to make your complete presentation. Should you, for example, go five or six minutes and there's some time remaining, that will be distributed evenly amongst the parties for various questions. Mr. Yuan, I will invite you to begin now, sir.

Mr. James Yuan: Good morning, Mr. Chairman. Good morning, members of Parliament. Thank you for the opportunity for me to make the following presentation on behalf of the more than 800 members of the Canadian Association of Acupuncture and Traditional Chinese Medicine. It has always been our position that in order to protect the rights and safety of the general public and to ensure the quality of the care provided by the practitioners of acupuncture and traditional Chinese medicine, it is of paramount importance to set up appropriate regulations and professional standards. The major beneficiaries of the process will be the patients and the health care system in Ontario. But Bill 50 allows different standards to be applied to different health care professions regarding the use of acupuncture. Furthermore, even though Bill 50 makes provisions to grant the title of doctor to those who meet the criteria as yet to be set up by the proposed college, doctors of TCM are not given any of the rights and privileges of any of the other regulated health professions who have also been granted the use of the title of doctor.

I would like to make the following comments on Bill 50. First, TCM is an independent medical science with its unique diagnostic and treatment modalities such as acupuncture, herbal medicine and tuina. Furthermore, a qualified TCM doctor should have the right to communicate a diagnosis, be able to order tests or X-rays, or move the joints of the spine beyond their normal physiological range and so on. If TCM doctors do not have access to any of the controlled acts, the title of doctor holds no authority in the eyes of the law.

Second, what is the definition of "adjunct therapy" when applying acupuncture? Is it based on the number of needling points or according to the nature of the disease? What is the standard used to distinguish using acupuncture as adjunct therapy from proper acupuncture treatment? As a professional, the use of a single needle or any medication must be justified and backed up by medical theories and appropriate academic training to achieve effective therapeutic treatment. Using acupuncture as adjunct therapy without the proper academic training will lead to unsafe situations.

1020

Bill 50 allows different standards to be applied using acupuncture as adjunct therapy, and in proper professional acupuncture treatment. At the present time, other regulated health professions require only a minimum numbers of hours in acupuncture, such as several weekend training sessions for their members to use acupuncture as adjunct therapy, whereas a proper acupuncture practitioner would have received 2,000 or more hours of training to be qualified to practise acupuncture. And yet to the general public, they appear to be

performing the same treatment. The acupuncture training received by a member of other regulated health professions does not guarantee safe and effective practice, and it puts the safety of patients at great risk. At the same time, it is most unfair to those who have received appropriate professional training in acupuncture.

We would like to see Bill 50 amended to give a qualified TCM doctor the rights and privileges that a doctor is entitled to; that is, to have the right to communicate the diagnosis; to be able to order tests or x-rays or move the joints of the spine beyond the normal physiological range and so on, so that they can provide better service to their patients. We would also like to see Bill 50 amended so that anyone who practises acupuncture must meet the same required standards. There should only be one set of professional standards for the sake of patient safety.

The Chair: Thank you very much, Mr. Yuan. We have limited time, but we'll begin with Ms. Witmer: about 30 or 40 seconds, please.

Mrs. Elizabeth Witmer (Kitchener-Waterloo): I see you're looking for some amendments to the legislation. You're looking for qualified TCM doctors to have the rights and privileges that a doctor is entitled to, and you do list them. You also say that you'd like to see the bill amended in order that anybody who practises acupuncture would have the same standards. What are you concerned about regarding patient safety, if that does not happen?

Mr. Yuan: Thank you for your question. You know, you think that acupuncture is a treatment method of traditional Chinese medicine strongly related to Chinese medicine theory. Even if you use one needle, you should have the whole knowledge. Like a medical doctor, if they use medication, they should be using the whole knowledge for the patients.

The Chair: Mr. Yuan, with respect, I will need to move ahead with Ms. Martel.

Ms. Martel: Actually, if you want to keep going and finish off your thought, go ahead.

Mr. Yuan: Yes, no problem.

Ms. Martel: that's the same thing you're concerned about—

Mr. Yuan: Same question, yes. If some professions want to use acupuncture, no problem, if they can give good service to the patient. This we hope. But one profession should be one single standard. This provided, too, in the law. This is a big concern. Most Chinese medicine doctors are concerned about that, because we know this medicine.

The Chair: Thank you, Ms. Martel, for yielding your time. We go to the government side, if there are any questions?

Mr. Fonseca: Yes. Thank you, Mr. Yuan and your association, for your presentation and for your comments.

I have to say that the focus on safety is something that was, first and foremost, in front of this government in terms of making this decision, this commitment to move forward with traditional Chinese medicine and its regu-

lation. It wasn't done by the previous governments. We want to make sure that the people in Ontario are safe and that they know when they access traditional Chinese medicine that they are getting a standard of practice that is the best that can be offered by the practitioners.

Mr. Yuan: I want to say that every Chinese medicine doctor, including our association, wants regulation. We've been promoting this for 20 years—from 20 years ago. Right now, we are happy that maybe we can get regulation.

The Chair: That's great. Thank you, Mr. Yuan, for your presentation on behalf of the Canadian Association of Acupuncture and Traditional Chinese Medicine, as well as for your written submission.

DAVID DONG LIU

The Chair: I would now invite our next presenter to come forward, and that is Mr. David Dong Liu.

Applause.

The Chair: I believe that was applause for the committee's wisdom. We accept it. I now invite Mr. David Dong Liu to begin his presentation.

As you've seen, Mr. Liu, you have 10 minutes in which to make your combined presentation. Please be seated and please begin.

Mr. David Dong Liu: Good morning, MPPs. Good morning, everyone. Today, I'm very proud to be here, to be a Canadian citizen here in Ontario.

I was a physician back in China. I was also a health educator, teaching medicine in university. When I came to Canada, I've been practising acupuncture for six years.

I support Bill 50. For today's hearing, there are two subjects I need to mention. Number one is that tuina therapy should be regulated as a part of traditional Chinese medicine practitioners. Secondly, just like Dr. Yuan said earlier, we need one standard of acupuncture, not 23 standards. One standard is very important. So let me give you the details.

The object today, number one, in regulating acupuncture and traditional Chinese medicine is to protect public safety and ensure the high standard and quality traditional Chinese medicine and acupuncture care.

Number two, I'm very proud that Bill 50 recognizes and respects the integrity and the philosophy of traditional Chinese medicine culture and acupuncture.

Number three is to ensure Ontarians have equality, fairness and the freedom of choice for their medical care.

The last one is to help to improve the health of Ontarians, reduce health care costs, shortening waiting lists and assisting the government and all Ontarians to move to shorten the waiting time for emergency care.

1030

Tuina therapy is manipulation, treatment and skilled technology. It's a combination of the Chinese unique massage, manipulation, bone setting for both chronic pain and acute disease. So in China—and in Korea too—they have tuina hospitals in most cities. Even in every western hospital, the tuina department is for rehab or for some chronic illness.

Most significant, I have been teaching tuina for four years in the Ontario College of Traditional Chinese Medicine. Most of our students learn the five skills for tuina:

Number one, skills to treat bedwetting children. Lots of children, 10% of the paediatric, zero to six, wet their beds at night. That brings headaches for their parents. It reduces the quality of life for the children and their parents. So tuina is a single traditional medical procedure that can help those patients, 10% of children. No medical, no pills, no chemicals, no punishment, so it's a very useful medical skill.

Also, tuina for rehab, national standard: an organization to produce scientifically based reviews of the complementary and alternative medicine that is called natural standards. Most diseases, for example, nausea, motion sickness, low back pain, post-operative pain—over 29 conditions can be treated successfully by tuina therapy.

It is very satisfying to people in east Asia. Ontario has a large Asian population today, so tuina therapy should, and I hope will, be part of the traditional Chinese medicine in Bill 50 that will increase the quality of care, the standard of care.

Second, and very importantly, we're talking about one standard of acupuncture.

I was working on this paper until 3 o'clock last night, and I woke up at 5 o'clock this morning to edit it. At the beginning, it was 10 pages, but I made it two pages. Yes, this morning at 5 o'clock I woke up. I mention that we cannot have 23 standards for acupuncture—only one standard.

Most neuromuscular pain is dramatically improved by acupuncture. For this reason, I see in Bill 50 that one big mistake is talking about TCM acupuncture and western acupuncture. One big mistake is that there should be no significant difference between TCM acupuncture and medical acupuncture. I'll try to go to review if you need it—refer this request. So medical acupuncture is only acupuncture operated by doctors—the American Association of Medical Acupuncture. The reason that in Ontario only McMaster has a medical acupuncture program is that there are no regulations in Ontario. So even after 10 months of training, massage therapists or barbers can go to McMaster to study acupuncture. That is shameful.

There are a lot of risks for acupuncture, besides a great dramatic success rate in clinical use—a small risk I mention here the most risk: brain damage, stroke, nerve and muscle control problems, if acupuncture is treating the nerves and you injure the nerves, and pneumonia. Lots of people have a little hole in the sternal bone, so if people insert a needle, even just one inch, it could damage the heart. And acupuncture can sometimes terminate a woman's pregnancy—if there is misuse of the acupuncture point, they can have a miscarriage—or increase her ability to be pregnant.

The practice of acupuncture is very safe. For most doctors of acupuncture, it is a very simple procedure based on a body of knowledge and the competency of

their skills. So in order to protect the public's health and safety, to give people the equality of freedom of choice of health care—

The Chair: Mr. Liu, I'd like to thank you on behalf of the committee for your presence and for the excellent documentation you provided us regarding the therapies you've discussed.

Mr. Liu: Thank you very much.

TORONTO SCHOOL OF TRADITIONAL CHINESE MEDICINE

The Chair: I would now, with respect, invite our next presenter, Dr. Mary Xiumei Wu, the president of the Toronto School of Traditional Chinese Medicine. Ms. Wu, please come forward and be seated. Your material is being distributed by the clerk, and I invite you to begin now.

Dr. Mary Xiumei Wu: Good morning, ladies and gentlemen. It is my pleasure to be here today and to get this opportunity. I don't know how to express my gratitude and my excitement. Normally, I'm quite calm, but today I'm so excited about this. First of all, I would like to express our gratitude to our government for bringing the bill to this stage. Also, I would like to thank the honourable Elizabeth Witmer and the previous government, which helped so much in trying to move the regulation of traditional Chinese medicine and acupuncture forward, and Ms. Martel—certainly, we talked about it—for your input and support for the regulation of traditional Chinese medicine.

Saying all of that, I really feel that the regulation of this profession will bring Ontarians a safer, more effective and better quality of TCM service. However, Bill 50 is not perfect and there are some things that we need to deal with, and I hope that you hear me today loud and clear, because when I presented last time, many points were not heard; I said and said these things but was not heard. So in the past few weeks, I have spent a tremendous amount of time, more than full time—double time—studying Bill 50. This morning I have brought two suitcases of textbooks that I would like to show you, but I didn't know how to do it. So I would like to ask you, with permission, if this afternoon or tomorrow I could bring those books to show you, to just put them on your desk so that you can flip through.

In order to see why Bill 50 is not perfect and why we need to make amendments—I think, after hearing all this, you're going to hear a lot more—I have identified a couple of issues. First of all, the intention of Bill 50 is great: to protect the public and also to establish standards for the practice of traditional Chinese medicine, including acupuncture. However, I do feel that this bill will not protect the public effectively and will not regulate the practice of traditional Chinese medicine and acupuncture properly. The reason is that traditional Chinese medicine is a comprehensive medical paradigm, and a distinct one as well, and the treatment modalities have some potential harms that were not identified and defined. So the treat-

ment modalities are not defined and are not going to be controlled, except acupuncture now, which we took back as a controlled act. But all the other modalities will still be left in the domain of the public, and I'm going to talk very briefly about what the harms are and so on.

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Also, the restricted titles are not complete. Traditional Chinese medicine has three major modalities and therefore three major specialties: acupuncture, Chinese herbal medicine, tuina massage, and then the comprehensive practice. We don't have all the titles covered. Also, TCM is not fully recognized and not fully respected. There are some terms that we're not even allowed to use in the legislation, such as "diagnose," "treatment," and even "medicine." So we are now creating a bill where we are regulating some things, regulating some people, but not regulating all those things. That is a problem in this bill. Now, if I decide not to join the college and not to call myself a doctor of TCM or an acupuncturist, I can pretty much still practise most of the modalities of TCM. That may drive our industry underground, and also the standards will not be set. So I have made some recommendations here. You should all have a copy:

(1) We have to protect the public effectively, and also ensure the safety, effectiveness and quality of TCM care.

(2) Recognize and respect the philosophy and integrity of traditional Chinese medicine.

(3) Ensure the public has informed, fair access to choice in health care.

(4) Ensure equality among the health care professions.

(5) Help improve the health of Ontarians, and also reduce health care costs and shorten our waiting lists.

I do believe that traditional Chinese medicine can play a much more significant role for our aging population, for our health care system, for our government and for all Ontarians too. Therefore, my first recommendation for amendment of the bill is that the following therapies be incorporated as controlled acts, and that those acts be authorized only to qualified members of the TCM profession:

(1) Acupuncture: Acupuncture should be included as a controlled act here under "Performing a procedure on tissue below the dermis." But the bill did not clarify this one.

(2) TCM diagnosis: TCM diagnosis is an essential and critical factor for safe and effective treatment among all. It's one of the most important characteristics of TCM. We treat disease based on the diagnosis and differentiation of syndromes. If heat syndrome is misdiagnosed or ignored, then the treatment will be totally wrong. With acupuncture treatment, we have a manipulation called "setting the mountain on fire," where if the body is very cold, acupuncture manipulations can "set the mountain on fire." That's how hot it is. So if used wrongly, there will be problems.

(3) Tuina massage: As David Liu just mentioned, there is so much to talk about.

(4) Prescribing, compounding and dispensing Chinese herbal medicine and natural health products: This also should be a controlled act.

I know this may have something to do with the federal level. I was involved with Health Canada on a number of expert advisory committees for over eight years, and I know what's going on there: They were waiting for professional regulations. Now we are going to have regulations here, and we do believe that at this time, it is a golden opportunity for us to try to set this thing right.

I've been in contact with BC's college and so on; we keep in contact all the time. I'm also a member of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia. I'm also certified by the National Certification Commission for Acupuncture and Oriental Medicine in the United States. With over 30 years of experience in clinic, with a formal TCM education, five years of university training and also with my over 10 years of TCM education and about 10 years of involvement with the regulation of natural health products and also regulation of our profession, I do believe that those things should be set.

Also, with regard to the restricted titles of the members of the new college, I would like to recommend that in addition to doctor of TCM, in addition to practitioner of TCM, in addition to acupuncturist, we also need to add tuina massage therapist, as well as TCM herbalist.

The TCM profession should be authorized in the following controlled acts, because traditional Chinese medicine is a distinct paradigm. A lot of the things that we do within the TCM scope of practice are also related to these controlled acts. We would like to have TCM serve our people to its best potential, and therefore those things should be authorized to qualified members with the proper training:

(1) communicating a diagnosis and differentiation identifying a disease or disorder as the cause of a person's symptoms according to traditional Chinese medicine;

(2) performing a procedure on tissue below the dermis, below the surface of a mucous membrane, for the purpose of acupuncture and its related procedures;

(3) setting or casting a simple fracture of the bone or a dislocation of a joint by qualified TCM specialists under the supervision of MDs;

(4) moving the joint of the spine beyond a person's usual physiological range of motion using a fast, low-amplitude thrust;

(5) administering a substance by injection or inhalation for the purpose of TCM treatments;

Last, but not least, is prescribing, dispensing selling or compounding Chinese herbal medicine and natural health products.

The Chair: Ms. Wu, I'll have to intervene there. I would like to, on behalf of the committee, thank you for your presentation, as well as your written material with regard to your representation on behalf of the Toronto School of Traditional Chinese Medicine.

RICHARD MAO

The Chair: With respect, I would now invite our next presenter, who is Mr. Richard Mao. Mr. Mao, as you've

seen, you have 10 minutes in which to make your combined presentation. Please be seated. That begins now.

Mr. Richard Mao: Good morning, Chair and members, MPPs, ladies, gentlemen. I am the president of the Ontario Chinese Medical Centre. The following is my presentation.

With thousands of years of splendid history, TCM, including acupuncture, has been considered as one of the most effective treatments, proven incontrovertibly by hundreds of millions of cases of clinical practice. Currently, it is being legislated by the Ontario government, this indicating that the curative, active effect has been well recognized. People in Ontario will benefit from this legislation in the form of shortened waiting time of hospitalization, reduced costs of medical care and improved overall health. I believe that it is a very advisable move of the House of Commons and the government. Personally, I strongly support it. But in order to accomplish the original great intention of this legislation, we must repair some serious weakness in Bill 50 to ease the perplexity and misunderstanding of the public and the profession, and also reduce the difficulty and resistance of the implementation.

My suggestions for amending Bill 50 are as follows:

First of all, changing "assessment" to "diagnosis" and granting TCM doctors the right of diagnosis, or mentioning neither "assessment" nor "diagnosis," leaving diagnosis alone as a natural right of TCM doctors. If TCM doctors do not have the right of diagnosis, no one could offer TCM treatment to the patients who want it, since western doctors do not know how to diagnose in the TCM way.

1050

Second, defining the clinical scope of practice of TCM clearly, the scope including prescription of syndrome differentiation, acupuncture, electric acupuncture, fire acupuncture, pricking blood therapy, moxibustion, suction cupping, magnetic therapy, tuina manipulation, scraping, qi guong, tai ji, dietary and music therapy. In the scope of TCM, there are three major specialists: (1) herbalists, (2) acupuncturists and (3) tuina manipulators. One of the purposes of defining the scope of practice is to help consumers to understand and realize the difference between TCM and other medical professions, choose the "best fit" treatments for themselves and avoid wasting time and unnecessary medical disputes. The other purpose is to protect the completeness of TCM theory and technology.

Third, persisting in only one acupuncture professional standard in principle, since acupuncture is a profession. However, in order to achieve the goal of rational unity and balance, it is necessary to classify different situations in dealing with the other 23 medical professions practising acupuncture. On one hand, there is only one standard in acupuncture and its enrolment is just like western medicine for physicians, surgeons, dentists, ophthalmologists and psychologists. Truly, science is not political. In the political field, for example, different parties have their own opinions in governing Ontario;

also in a restaurant, people can choose their own favourite dishes. At this very important time in TCM legislation, I would like to sincerely suggest that all of us respect science and TCM. Do not let an acupuncture professional standard become platforms or menus.

On the other hand, according to the rule of the World Acupuncture Association in 1999, if western doctors would like to practise acupuncture as a supplementary treatment, they need at least 220 hours of training. If they want to be a certified acupuncturist, they need at least 1,500 hours of professional training. This authoritative rule can be fully accepted in Bill 50 to allow western doctors to practise acupuncture. As for those medical practitioners who are not qualified to diagnose and invade skin, they can continue doing acupuncture through the grandfathering rules during the transition period. After this period, the new practitioners will take the exams from the Ontario College of Traditional Chinese Medicine. If the issues mentioned above cannot be agreed on, we can let Bill 50 leave a blank and let the college handle it in future.

Fourth, implementing grandfathering rules should be clarified in Bill 50. Under the premise of protecting consumers' health, we should face and respect the history and reality of TCM practitioners. The government should help them through fair and reasonable professional evaluation to be qualified to continue their practice. This will not only keep their living but will also protect the very small size of the TCM industry.

Fifth, indicating Chinese as one of the languages in the exam for a licence: Chinese is the original language in the science of Chinese medicine, including acupuncture. Therefore, its authoritative position cannot be replaced. At present, many profound theories and some key techniques still cannot be expounded precisely in any language except Chinese. It is a tough challenge to exchange between Chinese and western cultures. Therefore, Chinese must be one of the languages in the exam before the problem is solved. Moreover, many experienced TCM doctors and professors who have very limited English can still contribute their valuable knowledge and experience. This can also strengthen the TCM profession in Ontario.

Sixth, stipulating a public hearing process if any item needs to be amended, added or repealed: No important item in Bill 50 should be changed without a hearing process, which should especially listen to the TCM society.

The Chair: Thank you very much, Mr. Mao. Again, we have very limited time, but we'll begin with Ms. Martel of the NDP.

Ms. Martel: Thank you very much for your participation here today. What would you think of having essentially two definitions and then two standards for acupuncture, so acupuncture as practised by TCM practitioners and acupuncture practised as an adjunct therapy; that we define both, and then we have practice standards for the practitioners and a minimum practice standard for everybody else who provides acupuncture as adjunct therapy?

Mr. Mao: I see here a simple way. There must be standards, number one, but differing levels of practitioners—they do acupuncture; they have to meet a different standard.

The Chair: We now move to the Liberal side.

Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale): Thank you, Mr. Mao, for appearing before the committee. As you know, I'm a physician-turned-politician. I want, from your suggestions, to ask you a question: What's the difference between assessment and diagnosis in traditional Chinese medicine?

Mr. Mao: "Assessment" in the Chinese language means just an evaluation, but "diagnosis" is more professional language. Therefore, here, it has no difference. We prefer "diagnosis," but if it causes any arguments among professionals, then we'll leave it alone. It's just the natural right of the TCM doctor. We seem to have some differences in the Chinese language.

The Chair: We'll now move to Mrs. Witmer of the PC Party.

Mrs. Witmer: I'd just like to continue along the same line as Ms. Martel. Would you just continue? What do you think if there were the two different standards?

Mr. Mao: The difference is, I think there must be a standard, number one, but because western doctors already have many hours of medical training, they understand the body, the nerves, blood vessels, how they go, the muscles, bones. That's why some of the training can be transformed. That's why, according to the WHO and the World Acupuncture Association, any doctor, if they take around 200 hours, can do acupuncture as a supplementary treatment. If you want it to be a main treatment, then you need to understand more professional things.

The Chair: Thank you, Mr. Mao, for your deputation, as well as your written submission.

METRO TORONTO CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC

The Chair: I now invite, on behalf of the committee, our next presenter, Ms. Avvy Go, the clinic director of the Metro Toronto Chinese and Southeast Asian Legal Clinic. Ms. Go, as you've seen, you have 10 minutes in which to make the combined presentation, beginning now.

Ms. Avvy Go: My name is Avvy Go, and I'm a lawyer by training and the clinic director of the Metro Toronto Chinese and Southeast Asian Legal Clinic. Obviously, it's not a medical clinic; it's a legal clinic. For those of you who are not familiar with our clinic, we provide free legal services to low-income immigrants from the Toronto area's Chinese, Vietnamese and other southeast Asian communities. We have been an advocate for the regulation of the practise of TCM and acupuncture since the early 1990s, and we have made submissions to the HPRAC and other bodies on this very issue.

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We want to commend the government for taking an important first step toward recognizing the profession of

TCM. We very much welcome this opportunity to present our view on the regulation of TCM and acupuncture practice.

Of course we don't purport to have any medical expertise, and we're not approaching this issue from the perspective of the medical professionals who are seeking regulation. Our primary interests in this issue are two-fold: the promotion of access to regulated health care services for the diverse communities in this province, and the equal recognition of TCM/acupuncture practitioners within the health care profession. So we're approaching it on the issues of equity and access. From our perspective, we're going to focus on the following issues: the importance of TCM and acupuncture to the Chinese Canadian community; the need for a self-regulated TCM/acupuncture profession; and, as a side issue, the choice of languages to be adopted in the examination for regulation.

As we have mentioned, our clients are mainly non-English-speaking, low-income immigrants. Rather than being an alternative to Western medical treatment, as TCM is often known in mainstream society, many of our clients use TCM as a primary choice of treatment when they are in need of service. We commissioned a study, which I have attached to our submission. Basically, it shows that Chinese Canadians are twice as likely as non-Chinese to use acupuncture and three times more likely to consult an herbalist—and I think "herbalist" in this sense probably means TCM herbalist.

To our clients in particular, who are low-income, choosing TCM/acupuncture over Western medical treatment is often a choice with significant financial implications. Many of our clients are on social assistance and receive coverage from OW only for Western medical drugs. They have to pay out of their own pocket to purchase TCM and acupuncture treatments because of the general lack of recognition and regulation of TCM/acupuncture. Sometimes these treatments are covered by OHIP, but it's only if they are dispensed by regulated health care professionals. Many of our clients don't use regulated health care professionals due to language barriers and other issues; they would go to a TCM/acupuncturist who speaks their language, bypassing the mainstream health care system altogether.

So the lack of regulation of TCM/acupuncture has a disproportionate impact on our client communities for two reasons: First of all, they are more likely than the general public to be users of these treatments and are therefore more likely to be exposed to the risk of unregulated practice; second, the lack of regulation means lack of OHIP coverage, lack of insurance coverage, lack of many other things, which creates a significant financial burden on low-income immigrant communities.

I'm going to skip to the issue. The lack of regulation has posed a great deal of problems to the practitioners themselves, of whom many are immigrants from China. We have seen in the past some cases of practitioners being charged with all kinds of very strange criminal offences because their practice has not been recognized.

So in a way, lack of recognition has also resulted in the criminalization of this profession. Bill 50 represents a very significant achievement by the TCM practitioners, who have been lobbying long and hard for their rightful place in the health care professions in this province.

What I want to emphasize, and I think what you're hearing, is that this practice has existed for many, many years, thousands of years, separate and apart from the practice of Western medical science. It has served generation after generation adequately as the only form of medical treatment available to people in many parts of the world, in particular in Asia. Its legitimacy is therefore born of its own inherent and coherent system of knowledge and analysis. It does not owe its existence to other forms of knowledge, least of all to the medical science system. I think that's what a lot of these practitioners are imploring you to understand. This is a so-called alternative form of medicine, but in fact it is the mainstream form of medicine for many people in various parts of the world. It is becoming more and more mainstream even in Canada, as well, so we have to regulate TCM practitioners, not only to recognize the legitimacy of the profession, as a profession, but also to ensure the safety of the public is being protected.

There are many different ideas and ways to regulate, and I would encourage you to listen to the various amendments that are being put forward today. There may be ways in which we can talk about the various classifications, certifications, but all these issues must be done in consultation with the traditional Chinese medicine practitioners themselves. I think they are in the best position to tell you how to regulate. The issue now is really not whether we should regulate, but how.

I just have a side issue which is not covered in the bill and probably shouldn't be, because it's probably something that should be left to regulation, but it's around the language of the examination, because that could be an issue as well. For many of the traditional Chinese medicine practitioners, English is not their first language, so it will become a barrier if the examinations are only conducted in French or English. This is just one issue that we thought needed to be brought forward.

In general, we support having the bill. There may be other improvements that can be put forth, and I would urge you to take into account the considerations that have been forward today, with the view that you see TCM/acupuncture as a legitimate form in and of itself. It should not be judged by any other forms of medical systems, including the western medical system. Thank you.

The Chair: Thank you, Ms. Go. We have about a minute per side, beginning with the government side.

Mr. Fonseca: Thank you for your fine presentation. I have to say that bringing TCM into the mainstream—I know it's helped thousands, but maybe it will help millions here in the province of Ontario.

I know myself that western medicine wasn't working for an ailment that I had. It was a tendon problem, and it was actually stopping me from getting to one of my

dreams, getting to the Olympic Games. Through traditional Chinese medicine and acupuncture, I was able to get relief, solve what was ailing me, and was able to move on and represent Canada in the Olympic Games.

Those types of stories, I believe, will grow with making TCM a regulated health profession. We'll be able to bring it into the mainstream and address many of the issues you've brought forward here in your fine presentation. I thank you very much for that.

The Chair: Thank you, Mr. Fonseca. We'll move now to the PC side.

Mrs. Witmer: Thank you very much for your presentation. I think we all agree that this should be a self-regulated profession.

You talked about French as a language. We've had English, we've had Chinese—why the French?

Ms. Go: Well, you know, official languages—rather than looking at the official languages, we should have Chinese as a language.

Mrs. Witmer: Okay. I thought there was another reason. Thank you so much.

The Chair: Thank you, Ms. Witmer. Ms. Martel.

Ms. Martel: Thank you very much for your presentation. Let me ask you this. I am looking for a way that we can protect the public, that we can have this profession regulated, as it should be, also recognizing that there are a number of other health care professionals who provide acupuncture—in my part of the world, which is northern Ontario, probably chiropractors, physiotherapists. How do we ensure that the other regulated health care professionals, who I still want to be able to continue, have some kind of at least minimum standards, so that if I go to a physiotherapist or if I go to a chiropractor, I know that they have “this” level of training, “this” level of practice, have passed “this” exam, etc.?

Ms. Go: For instance, if you are a physiotherapist but you are also a nurse, my understanding is that you will be regulated by both the College of Nurses and the College of Physiotherapists. If someone is going to practice acupuncture, what is preventing them from also joining a college that will be regulating TCM/acupuncture practice?

Whether or not there should be different standards, I'm not in the position to say, because I know nothing about the requirements. But if the other health care professionals are already doing this—

The Chair: Thank you, Ms. Martel, and thank you, Ms. Go, for your deputation on behalf of Metro Toronto Chinese and Southeast Asian Legal Clinic.

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ONTARIO COLLEGE OF TRADITIONAL CHINESE MEDICINE

The Chair: With respect, I would now invite our next presenter, Professor Ben Wu of the Ontario College of Traditional Chinese Medicine. Mr. Wu, as you've seen, you've got 10 minutes in which to make your combined presentation. I'd invite you to begin now, Professor Wu.

Mr. Ben Wu: Full endorsement of legislating traditional Chinese medicine and acupuncture and swiftly passing third reading of Bill 50: I, representing all the staff, instructors and students of the Ontario College of Traditional Chinese Medicine, and with more than 2,000 members of the New Canadian Community Centre, fully endorse the Bill 50 legislation of traditional Chinese medicine and acupuncture and look forward to fast-tracking third reading and the passing into law in the shortest time. It is only through this process that we can provide the maximum benefits to the general public, assuring the general public that the therapeutic treatment they receive from TCM and acupuncture services is safe and of high quality.

(a) Legislation will maximize the protection of public benefits. Legislation will enable the general public to choose their personal preference of safe and high-quality TCM and acupuncture treatment. This also prevents the general public from receiving TCM and acupuncture treatments from unqualified and bogus practitioners.

(b) Legislation will only grant qualified practitioners to perform TCM and acupuncture. Legislation will be able to regulate TCM and acupuncture professionals with the following: registration with qualifications, setting standards for professional examinations, receiving complaints, discipline and restraint.

(c) Legislation will provide accountability to the general public. Legislation can create a regulatory board for the health practitioners accountable to the general public to assure consumers that the TCM and acupuncture services are not just meeting the standards but also maintain professional capability. The regulatory board will provide a mechanism to receive complaints from consumers who may have encountered injury, harm or hurt arising from the treatments.

(d) Legislation will enhance mutual co-operation between traditional Chinese medicine and western medicine to provide better health care to the general public. After legislation, western medical doctors can provide appropriate acupuncture services to patients, or refer patients to fully regulated TCM and acupuncture professionals. Furthermore, to provide better health care to the general public, TCM and acupuncture professionals and western medical doctors who practise acupuncture may work, research and develop together on case control studies, thus amplifying the co-operation advantages of both traditional Chinese medicine and western medicine.

(e) Legislation can save on resources and assist to reduce pressure on medical care. Medical consumers may sometimes discontinue or throw away prescribed medicine that drains and wastes our resources. Acupuncture is comparatively less costly than western medicine, and substantial savings will be achieved. State-of-the-art medical equipment but a shortage of high-tech medical operators has increased the backlog, causing longer waiting time to the consumers. The TCM acupuncture treatment can assist and reduce the pressure on our current medical state.

(f) We appeal that Bill 50 will clearly define the qualification of “registered acupuncturist” for the benefit of

the general public to select their acupuncture practitioners.

We agree that all medical personnel with the “doctor” title, including physiotherapists, must have minimum hours of trainings—above 200 hours—in order to perform limited acupuncture in their own professions as adjunct modalities. Other personnel in the medical professions, either regulated or not, will follow the requirements set by the upcoming traditional Chinese medicine college; must undergo a set standard of learning and training, both in academic and clinical internship; and only be able to obtain a passing grade set by the examining board in becoming a registered acupuncturist.

(g) We appeal that Bill 50 will clearly state that tuina treatment will possess equal status with the acupuncture treatment. Tuina is equal to acupuncture. It is also a part of traditional Chinese medicine. There are intrinsic differences between tuina and massage. Massage focuses on muscles and tendons, which can provide relaxation and treatment in sports injury. Tuina focuses on meridians and acupoints, where the treatment is emphasized on acupoints that will transport healing effects through the meridians to reach the organs’ infirmity. Tuina encompasses not only relaxation and sports injury, it also includes internal medicine, surgery, gynaecology and paediatrics as well. This is the distinctive quality of tuina. The function of tuina and acupuncture are equal, only different in mediums. Acupuncture applies metallic needles, while tuina applies “finger needles.”

The Chair: Thank you, Professor Wu. Just a handful of seconds left per side.

Mrs. Witmer: Thank you very much for your presentation. Why do you think that the tuina treatment was not included in the bill; and you’re asking for equal status?

Mr. Wu: Pardon?

Mrs. Witmer: In (g) you’re saying that the tuina treatment should have equal status with the acupuncture treatment.

Mr. Wu: Yes, I suggest that tuina is the same as acupuncture; right?

Mrs. Witmer: Right.

Mr. Wu: But just now Bill 50 does not include tuina, but only the TCM includes tuina.

The Chair: Thank you, Ms. Witmer. Ms. Martel?

Ms. Martel: Thank you for your participation here. In (f) you say regulated health professionals who have the “doctor” title, if they’re going to practise acupuncture, need to have 200 hours of training and they practise adjunct acupuncture; is that what you’re suggesting?

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Mr. Wu: Yes.

Ms. Martel: The second part that I didn’t understand is other people who don’t have the “doctor” title—because there are lots of other regulated health professions who don’t use the “doctor” title—they should be regulated under the TCM college?

Mr. Wu: No. I think if you’re not a doctor or physiotherapist, you need to follow up in future with the

college, the standing, you get training and the exam. After you’ve passed the exam, you work with as a registered acupuncturist. This is why for this part, I read “registered acupuncturist,” because a registered acupuncturist—different ways of acupuncture.

The Chair: Thank you, Professor Wu. We’ll move now to the government side.

Mr. Kular: Thank you very much for your presentation. The question I have is—as you said, tuina and acupuncture is done differently. You have mentioned the minimum training for acupuncturists should be 200 hours.

Mr. Wu: Yes.

Mr. Kular: How many hours do you recommend for tuina massage therapy?

Mr. Wu: Okay. I think one doing tuina must follow up in the future the college’s standing. Because tuina also focuses on meridian points. It is different, like massage, only you massage for the local, the muscles and the tendons. But from our way, touch the points, this can transfer—

The Chair: Thank you, Dr. Kular, and thank to you, Professor Wu on behalf of all members of the committee for your deputation on behalf of the Ontario College of Traditional Chinese Medicine.

ONTARIO ASSOCIATION OF ACUPUNCTURE AND TRADITIONAL CHINESE MEDICINE

The Chair: I’d now like to invite our next presenters, Marylou Lombardi, Kevin Liu, Chris DiTecco—president, practitioner, practitioner—from the Ontario Association of Acupuncture and Traditional Chinese Medicine. As you’ve seen in the protocol, you have 10 minutes in which to make your full presentation. I invite you to be seated, and please begin.

Ms. Marylou Lombardi: I’d like to thank the standing committee and the government for having us here today to discuss Bill 50. I’m speaking on behalf of the Ontario Association of Acupuncture and Traditional Chinese Medicine. My two associates are also members of the association. I wish Mary was here because I did bring all of the textbooks with me. I had my support staff carry them in for me.

First of all, I would like to say that I wish I could have locked myself in the room with the ministry staff, because I still have a lot of questions. I would like to thank Shelley Martel for having them speak to us today.

Basically, what I’d like to say is that Bill 50 is fundamentally flawed. I don’t think that it recognizes or regulates the profession and medical practice of acupuncture adequately. It promotes multiple standards for the practice of acupuncture, which endangers public safety, and ignores the fundamental purpose of regulation, which is to protect public safety and ensure the public access to the highest quality of health care. In the interest of public safety and in the interest of ensuring that the public can make an informed choice when

choosing health care, the OAATCM insists on the following amendments and revisions to Bill 50.

In your package I've included some background information. You have a copy of Bill 50 that I've marked. You have a copy of the World Health Organization standards for the practice of acupuncture. I thought I would also look at other regulation for health care professions in order to compare how they've been regulated and some of the details in their legislation to how this bill has been written.

So the first amendment is that acupuncture should be recognized as a health profession in Ontario. Currently, I believe acupuncture is being treated as a modality in Bill 50. As written, this bill does not recognize acupuncture as a health profession, a status that it enjoys the world over and in the three regulated provinces in Canada. Many people in this room have spent thousands of hours studying 5,000 years of knowledge, as evidenced by these textbooks, tradition and practice. To ignore this status is disrespectful to the profession and to the Chinese culture that it owes its teaching and foundation.

Amendment 2 is that section 18 should—I said “should be excluded from this bill,” but perhaps it needs to be revised and amended. Bill 50, the Traditional Chinese Medicine Act, is regulating the profession of traditional Chinese medicine and the specialties included in traditional Chinese medicine. If you refer to the bill, it says that no other person other than a member of this college can hold themselves out to be a practitioner of traditional Chinese medicine or acupuncturist or practise any of the specialties included in traditional Chinese medicine. Although not clearly defined in Bill 50, these specialties are: acupuncture; Chinese herbal medicine; tuina and die da, which are Chinese massage and traumatology; shi liao, Chinese dietary therapy; and tai chi and qigong, which is Chinese exercise therapy.

My understanding is that this bill should apply to those currently unregulated practitioners of traditional Chinese medicine and members of the other regulated health professions who wish to practise traditional Chinese medicine which includes the specialty of acupuncture.

Section 18 raises the following questions for me:

(1) Who should have the right to practise acupuncture in Ontario?

(2) Who should determine the minimum standard of practice for acupuncture?

(3) Should professions that have no training in invasive procedures, access to the controlled act of a procedure below the dermis or any formal training in treating physical or internal conditions through any type of hands-on therapy be given the right to practise acupuncture at the discretion of their own professional college when that is clearly not their area of expertise?

If you want this bill to regulate all acupuncture, then it would seem appropriate for one college to set the minimum standard for acupuncture. This does not mean that the profession of traditional Chinese medicine would have the monopoly over the practice of acupuncture

because anyone who meets that minimum standard would be able to practise it. It would mean that the College of Traditional Chinese Medicine Practitioners and Acupuncturists would set the standard for acupuncture to ensure that any one who practises acupuncture, whether as a full medical practice or as an adjunct practice, will practise it safely and effectively.

We're not trying to put anyone out of business, as we have been accused; we are simply trying to improve the professional standard and improve and monitor the education and training for acupuncture.

The World Health Organization is trying to set an international standard for acupuncture. Let me clarify that the World Health Organization has never recommended that acupuncture be practised without knowledge of traditional Chinese medicine. That's for any profession; it's not limited to TCM practitioners. As many people have mentioned, for medical doctors, they recommend 200 hours of training for an adjunct practice and 1,500 hours for a full practice of acupuncture.

Other questions that this bill has raised are, are the other regulated health professions practising something different from traditional Chinese medicine acupuncture, and does the public have the right to know that there is a difference? If I were to go out on the street right now and ask 100 people if they knew that there were different types of acupuncture, they would look at me like I was crazy—even my patients. They don't know that there are different styles of acupuncture being practised in Ontario and in the world. How does this bill clearly identify the difference between, say, what is sometimes called medical acupuncture or intramuscular stimulation or dry needling? How does the public know? When they walk into someone's office and see the word “acupuncture,” they don't know what they're going to get. They don't know what that acupuncture treats and how much training that person necessarily has.

Some of the other regulated health professions may argue that what they practise is different from traditional Chinese medicine practitioners, just as chiropractors practise their specialty of chiropractic adjustments and physiotherapists practise spinal manipulations. If other health professions can share activities and still respect the differences, then why not in this case? If they could agree to change the name to “intramuscular stimulation,” all disputes would be resolved. They would not be restricted from practising it, their patients would still have access, and the public would clearly understand that there is a difference in the amount of education and training they have, in the therapeutic approaches they use, the conditions that it treats and the diagnostic methods utilized.

At present, the Acupuncture Foundation of Canada Institute offers courses to some other regulated health professions in anatomical acupuncture, or what is sometimes referred to as intramuscular stimulation. The total number of hours is 285. However, it's not mandatory for them to complete that 285 hours before they go out to practise on the public. Basically, they take a weekend of course training in level 1, which is 30 hours. Then on

Monday, they practise on the public. After level 2, they can bill the insurance companies for acupuncture. So you can understand their reluctance to change the name to "intramuscular stimulation," because intramuscular stimulation is not covered by the insurance companies. So we have a group of people who practised for thousands of hours of training and we can't even get covered by insurance companies, but someone takes two weekend courses and they can be covered by insurance. It's not very fair or equitable if we allow other colleges to set a standard like that and allow their practitioners to go out after only 30 hours of training and practise on the public.

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The other amendment is the "doctor" title in the controlled acts. I checked out all of the other health professions that currently have access to the "doctor" title, and all of them have access to the controlled act of communicating a diagnosis. I think we have heard this several times, that communicating a diagnosis so that the patient understands that they have a condition is very important for this profession.

Could I know how much time I have left?

The Vice-Chair (Mr. Khalil Ramal): You have one minute left.

Ms. Lombardi: The other amendment is that mandatory referrals should be excluded from this bill. I also need clarification: I don't know whether that means that I can only treat someone who's referred to me by another medical health profession. I don't know if that means that I can only treat someone who has a medical condition previously diagnosed by a medical doctor. Does it mean that I can't treat certain medical conditions? This clause, mandatory referral, is not in any other health legislation. I looked at the massage therapists, the chiropractic act. It may be implied, but it is not written in their legislation. I think that means we're being treated differently under this legislation.

The Vice-Chair: Thank you very much. Your time has expired.

Now we have with us the Institute of Traditional Chinese Medicine, if they could come forward.

Sorry; you have a question?

Ms. Lombardi: Are you going to have Tom speak and then we'll have questions?

The Vice-Chair: Your time has expired. You had 10 minutes. There's no time for questions. Thank you very much for your presentation. But if you wish to speak to any member later on, feel free to do that.

INSTITUTE OF TRADITIONAL CHINESE MEDICINE

The Vice-Chair: Sir, you know the procedure. You have 10 minutes. If you wish, you may speak for the whole 10 minutes, or you can divide it between speaking and questions. So go ahead, sir.

Mr. Tom Kiroplis: Good morning, ladies and gentlemen. My name is Tom Kiroplis. I represent the Institute of Traditional Chinese Medicine, also known as ITCM,

and have been a teacher there since 1999. I am also the vice-president of the Ontario Association of Acupuncture and Traditional Chinese Medicine, the OAATCM, since 1997. Can you make that correction, please, on your notes? I put 1977, but there was no way I was around. Before pursuing Chinese medicine, I was also a teacher for the Peel Board of Education for 10 years.

The ITCM was founded by Dr. David Lam in 1970. It is the oldest established school of Chinese medicine in Canada. Over the years, the ITCM has been successful in developing competent TCM practitioners who have gone on to have successful careers helping many Ontarians. All graduates have achieved accredited diplomas through one professional standard set out by the ITCM.

On a personal level, I was also a graduate of the ITCM. Following my graduation, I had the privilege of enhancing my education by traveling to China and working in a number of hospitals in Nanjing. During this time, it became apparent as to how adequately trained and prepared I was compared to many other students from different schools around the world. In fact, Dr. Lam still to this time has the postcard that I wrote to him while I was in China thanking him for preparing me so well.

Being in the teaching profession for over 15 years with a master's in education, I recognize the value of quality education and the importance of having a minimum standard in any profession. Multiple standards for the practice of acupuncture are unacceptable. For example, when the Ministry of Transportation gives a person a licence to drive a car, you wouldn't expect to see that person driving a tractor trailer through Toronto hauling dangerous goods. This is how silly and unacceptable it really is, but on a different scale. Not having minimal standards is a dangerous scenario in any field. It is common sense in any society to have minimal standards.

The purpose of professional regulation is to provide the public with assurance of appropriate and quality health care services and to advance the public interest and, most importantly, the public safety. In the 2001 HPRAC report on traditional Chinese medicine and acupuncture, acupuncture was identified as posing the greatest risk of harm to the public if performed by an unqualified practitioner. When acupuncture is regulated as a profession, "acupuncturist" is the recommended protected title for the entry level or generalist in the profession. The acupuncturist practises acupuncture, which includes the insertion of needles to specific points, moxibustion, cupping, pricking and bleeding, acupressure, laser acupuncture, electro-acupuncture and magnetic therapy.

A professional title, in this case "acupuncturist," is supposed to enable the public to identify regulated professionals and should describe the profession's specialized knowledge and expertise. The title should be readily understood by clients and it should not be misleading as to what the clients can expect when they see this professional.

What about the other regulated health professions who practise medical acupuncture or intramuscular stimulation as adjunctive therapies? What do you think the

clients expect from them? I can tell you first-hand what clients expect, being in a unique position as an owner of two physiotherapy and acupuncture clinics myself. They expect, just like anyone else, to be treated by competent, professional practitioners who have met certain standards of practice. I have the privilege of interacting with many health care professionals on a daily basis. I screen and hire all of my employees, and it is embarrassing to me when practitioners come in claiming to know acupuncture. I see them perform and I am perplexed as to how these people can walk around so naive, thinking that they know the science. Every day they come to me with questions. This type of training under the multiple-standards principle has been inadequate to the needs of our patients and to the needs of public safety. Some I have hired and trained under my guidance, and only after this experience did they realize how inexperienced and misguided they really were. With the proper education, training and supervision that I have provided to all of our physiotherapists, they have become competent in performing acupuncture covering ailments under their scope of practice. As a result, our clinic has been voted Best Acupuncture by the Readers' Choice Award.

TCM is a science and has to be treated as such. Therefore, regulation is a must. If everyone is going to be allowed to practise acupuncture, how is the public going to know that there is a difference in what an acupuncturist does and what a physiotherapist using an adjunctive modality does? I know first-hand—I see it every day in my practice—that when our patients walk through that door, they automatically assume that all of our therapists are properly trained in acupuncture. Very, very few patients ask for their credentials and training. Fortunately, all of our patients receive quality care because of the high standards maintained and expected by me, in the same way that the ITCM set out for me.

When the public hears or sees the word “acupuncture,” the public perception is that all acupuncture is the same. But as I have explained above, this is the furthest from the truth. I don't have any problems with other professions practising TCM and acupuncture, as long as they meet the standard set by the new college of TCM and acupuncture of Ontario. All we are asking for is the same respect and consideration given to all other regulated health professions. For the safety of the people of Ontario, it is paramount that this profession be regulated by limiting the practice of acupuncture to those individuals who meet the minimum standard of competency set by a professional college.

In closing, this is the first time in Ontario's history that the provincial government is going to regulate a profession that did not originate in this country, nor does it derive from this culture. I understand that the Liberal government has an extremely difficult task ahead of them, but I trust they will make the regulation of TCM and acupuncture fair and equitable, making sure that the integrity of the profession remains intact. Thank you.

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The Vice-Chair: We have three minutes for questions. We'll start with the NDP.

Ms. Martel: Thank you very much for your presentation. Does this mean that we need to have two definitions of acupuncture, for starters? That's my first question. Obviously you're going to have TCM practitioners and acupuncturists providing acupuncture, who have much different levels of training, but you will still have other regulated health professions practising acupuncture as well. So do you need a definition that is different to describe who is who?

Mr. Kiroplis: If they meet the minimal standards set out by the college to be called acupuncturists, they can be called acupuncturists.

Ms. Martel: But you have a number of regulated health professions who practise acupuncture now, who do not have the level of training that I think the college is probably going to require for someone to have the title of acupuncturist.

Mr. Kiroplis: Again, if they meet the level of training to be called acupuncturists, so be it; they can be called acupuncturists. If they don't, if the college sets out a certain number of hours, also considering the amount of training they have in their other scope of practice—say 400 hours—they can be granted whatever title the college sets out. It could be called adjunct therapy, it could be called intermuscular stimulation—whatever the college sets out. If they say 200 hours gives you the right to practise intermuscular stimulation, then you can do intermuscular stimulation; if they say you can be called an acupuncturist if you meet 500 hours, then you can be called an acupuncturist.

The Vice-Chair: Thank you very much. Mr. Fonseca.

Mr. Fonseca: Tom, thank you very much for your impassioned presentation to us. Looking at some of the other colleges you referred to, they have gone through many years of extensive training. As the RHPA was set up, no one body would have a monopoly on a particular procedure. So when we look at the scope of practice, in terms of acupuncture, a nurse or a physio may be able to do acupuncture on a musculature or a tendon, but may not be able to use acupuncture to take care of somebody's headache. This is where some of the differences would come in.

Also, under this legislation, only those who are of the TCM college would be able to call themselves acupuncturists. Others would be able to perform acupuncture but would not be able to call themselves acupuncturists, as you want. So we are addressing that.

The Vice-Chair: Thank you very much. Mrs. Witmer.

Mrs. Witmer: I guess I would say to you, Tom, do you feel—because that's not what I'm reading—that the government is addressing the concerns you have expressed about multiple standards for the practice of acupuncture are unacceptable?

Mr. Kiroplis: Do I feel the government—

Mrs. Witmer: I think we've just heard from Mr. Fonseca, who has indicated that he believes the government is addressing these concerns. This used to be a huge sticking point.

Mr. Kiroplis: I don't at all. If you heard my presentation, if it goes ahead and becomes regulated as is—I

see it on a daily basis. All these physios—I've sat in a lot of interviews. Right now the education that's provided to them is so narrow in scope that it's embarrassing. So they have to meet a minimal standard. Like Mary Wu said, they're given a weekend or two-weekend course and they can do acupuncture and bill insurance companies the next day. There have to be minimal standards.

The Vice-Chair: Thank you very much for your presentation. Your time has expired.

VU LE

The Vice-Chair: We have with us Vu Le and Van Lam. Come forward. You can start whenever you want. You have 10 minutes. You can speak for the 10 minutes or you can divide it between speaking and questions. Go ahead, sir.

Mr. Vu Le: To begin, I would like to express my appreciation to the honourable MPPs and all the council members for being given the opportunity to speak at this hearing today and to have our concerns regarding the regulation of TCM heard.

My name is Vu Le, and I'm an acupuncturist and TCM practitioner working in the Mississauga area. As for my background, I have a bachelor's degree in complementary health sciences from Charles Sturt University in Australia, and have majored in biology and chemistry at the University of Toronto. I earned my honours diploma in acupuncture at the Michener Institute for Applied Health Sciences in Toronto. I have a diploma in oriental medicine from the NCCAOM, a regulating body in the US, and I'm also a registered massage therapist with the CMTO here in Ontario.

I'm here today on behalf of myself and my colleagues Ms. Van Lam and Mr. Zoran Jelcic, who are also TCM practitioners, but who unfortunately cannot be here with us today.

To start, to be brief and to the point, I would like to state that we strongly support the regulation of TCM in Ontario and also support the granting of the "doctor" title to selected and qualified members of the soon-to-be-formed college of TCM and acupuncture.

With the benefits of the patients, the community at large and public safety in mind, the practice of TCM and all of its related modalities should only be performed by those who are fully able and qualified to perform such procedures according to TCM principles and methods.

I would like to reiterate that the practice of TCM is the diagnosis of diseases and the differentiation of syndromes via TCM techniques and methods, and the treatments performing according to TCM therapeutic principles and methods to promote and maintain health, and to treat and prevent diseases.

With the regulation of TCM practice in Ontario and the discussion of granting TCM and acupuncturist "doctor" titles, we have the following suggestions.

First, have one, and only one, unified standard of professional practice for TCM and acupuncture. We suggest that the new college of TCM and acupuncture will

establish one standard of qualification that ensures consistency in the practice of TCM for all health care professionals. It would be confusing to have many standards of practice for TCM, specifically for the practice of acupuncture, as many before me have suggested.

We feel that as TCM and acupuncture are complete systems of dealing with health care issues, the scopes of practice are extensive and warrant much time and effort to learn and be proficient at. For this reason, they should be regulated under the new college of TCM and acupuncture, and anyone who wishes to practise TCM and/or acupuncture would have to meet stringent educational and practical requirements that are comparable with other colleges where the "doctor" title is currently in use, as set out by the new college of TCM and acupuncture.

If one wishes to be a doctor, he or she can go to medical school and fulfill all its requirements and duties, and pass all the required licensing exams. The same rational applies to the practice of TCM and acupuncture. If one wishes to practise as an acupuncturist or TCM doctor, he or she must demonstrate proficiency according to the college of TCM and acupuncture's standard of practice. As we aim for the standardization of the profession and to ensure consistency in practice and protecting the public, all who wish to practise TCM and/or acupuncture must comply with the college's regulations.

As an example, in our group, all three of us are registered massage therapists. Although we all had a more than adequate amount of formal training in massage and tuina in our TCM training, in order for us to practise massage as a specific modality and profession, we had to attend additional training in massage therapy and pass the provincial board examinations before we could call ourselves registered massage therapists in accordance with the regulations of the College of Massage Therapists of Ontario.

We highly suggest granting the right to communicate a TCM diagnosis, and also the right to have access to the many diagnostic evaluation methods commonly in use in our current health care system, including radiographic imaging, blood tests and other means to aid in the assessment and treatment of patients by qualified professionals, i.e., the new doctors of TCM who are fully qualified and trained.

We support the licensure examinations for all practitioners of TCM and acupuncture so as to ensure quality of performance, consistency of educational qualifications and, more important, public safety.

In regard to the licensing examinations, we suggest that there be a transitional period where there is adequate time for all practitioners of TCM and acupuncture to prepare for the licensing examinations. Continuing education units and upgrades can be taken then to facilitate the process of aligning with the new standards.

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During the transitional period, those who meet the requirements of the new college will be granted the title of doctor of TCM, whereas those who do not yet meet the requirements will be given temporary designations

and will be allowed to practice until a deadline established by the new college, at which point they must meet the college's requirements in order to continue practising or stop practising altogether until the requirements are met. Upon reaching the deadline, the temporary designations will be phased out, and there will only be a few, select titles established by the college.

We recommend the referencing of established, systemized methods of examination, such as those currently in use in the United States, Australia, UK, China and Vietnam. By not reinventing the wheel and learning from established and proven methods and systems, we may save valuable time in establishing the new standard of practice, and also save precious taxpayer dollars.

The Vice-Chair: Thank you very much. We have two minutes left. We can divide them equally between the three parties. We'll start with Mr. Fonseca.

Mr. Fonseca: Thank you very much for your presentation. As you know, the regulated health professions were set up to make sure that there was safety for all Ontarians, that there was accountability, that there was access to services, and that is what is happening with TCM. With TCM, we want to make sure that we bring it into the mainstream, that there is an assurance for the people of Ontario that it is safe. Not everybody, as is the practice today, can hang out a shingle any longer and just say that they can do TCM, acupuncture, tuina or whatever it may be. This is where we are moving as a government, with your help and partnership, to make this the best for the 12.5 million people who reside here in Ontario.

With the other regulated health professions, I spoke to their scope in terms of using acupuncture. They will no longer be allowed to call themselves acupuncturists, but they still do acupuncture today. They do it in a safe way, through the Regulated Health Professions Act, and this is how we will move forward with traditional Chinese medicine. Through the college, some will be able to call themselves acupuncturists, while others will, within their scope, still be able to practise acupuncture.

Mr. Le: We hope that will happen.

The Vice-Chair: Thank you, Mr. Fonseca. Mrs. Witmer.

Mrs. Witmer: You indicate here that you believe, contrary to what's being said here, that there should be licensing exams for all people who practise acupuncture.

Mr. Le: That's right.

Mrs. Witmer: So how would you recommend the government treat those individuals in the other professions who are going to be delivering acupuncture services?

Mr. Le: As you know, acupuncture can be performed on many levels. The full scope of practice of TCM and acupuncture can treat a wide variety of conditions. With certain other professions, most practices are limited to treating conditions of pain. However, if the regulated health professionals would like to call themselves acupuncturists—again, we came to the same points as other people—they can get upgrades, continue their education

and bring themselves up to a certain professional level. Then, when they meet the qualifications set out by the college, they will be able to call themselves acupuncturists.

The Vice-Chair: Thank you very much. Ms. Martel.

Ms. Martel: What happens if they don't want to be an acupuncturist, because that would be their main profession, but want to be a chiropractor and do acupuncture as part of their work as a chiropractor? What do you suggest in terms of what we do?

Mr. Le: I suggest that we have to modify the title. Again, they can say that they do intramuscular stimulation and needling techniques to treat pain. However, they cannot call themselves acupuncturists, because I think the public views the acupuncturist as a person who is fully trained in TCM and acupuncture and can treat a wide spectrum of ailments, not just pain.

The Vice-Chair: Thank you very much for your presentation, Mr. Le.

JOHN WANG

The Vice-Chair: We move on to another presentation, by John Wang. Mr. Wang, you know the procedure, so go ahead when you are ready.

Dr. John Wang: Good morning everyone, Chair and MPPs. My name is John Wang. I'm an acupuncturist and Chinese medicine practitioner from Kitchener.

First, I would like to thank you for giving me this opportunity to express my concerns and opinions about Bill 50, the Traditional Chinese Medicine Act, on behalf of a group of ordinary acupuncture and Chinese medicine practitioners from the Kitchener-Waterloo area. I phoned almost every practitioner in my city. Everybody supported and shared my idea. So here I want to raise a few serious concerns about Bill 50.

To us, the bill is fundamentally flawed right from the beginning. The legislation process is fundamentally flawed right from the beginning, since the initial consultation to first reading and second reading.

The term "traditional Chinese medicine," TCM, is a very broad term that includes many things, many professions, including mainly acupuncture, Chinese herbal medicine, bone-setting, tai chi, tuina massage, reflexology and so on and so forth. Regulating TCM is almost like regulating modern western medicine. You do not have a single college for modern western medicine. You separate them into different professions to regulate them separately. Everybody knows that modern medicine includes many regulated health professions, such as MD physicians, pharmacists, dentists, optometrists etc. The term "traditional Chinese medicine" is too broad to define by regulation. Instead—we should think about that—the regulation should apply to specific therapies and professions such as acupuncture and herbal medicine as separate professions. They all share the fundamentals of traditional Chinese medicine, yes, but they are separate, different professions. In China we have acupuncture doctors and herbal medicine doctors. They do different

work in different departments. And universities too: They have a department of acupuncture, a department of Chinese medicine; they're separate. When you put them all together, you get confused. You don't know what you're doing.

Among so many TCM specialties or professions, acupuncture is the most popular and is the only widely used and accepted profession in Canada. I know from my 10 years of experience that people always know us as acupuncturists: "You're an acupuncturist, a good acupuncturist." They know acupuncture. There are doctors who only use herbal medicine. Acupuncture is a separate profession.

As to Chinese herbal medicine, it's the second most popular, widely used in Canada. In Chinese herbal medicine, the most commonly used is not the traditional one, like the formulas. Nowadays, most people use this kind of stuff: Chinese medicine. This kind of stuff has also been used and is shared by naturopathic medicine doctors and homeopathic medicine doctors. Also, many health food stores sell this kind of medicine or natural product. All those kinds of herbal products should be regulated through unified federal natural health product regulations, not here.

Acupuncture must be regulated as a health profession as it has been regulated in many other jurisdictions: in the United States, China and many places. Yes, there is an urgent need to regulate acupuncture right now. But we cannot accept section 18 of Bill 50 to exempt other regulated professions to practise acupuncture without going through this proposed regulation. We insist that everyone who wants to perform acupuncture must be regulated through the proposed college of acupuncturists of Ontario. There must be a unified regulation for one health profession, the profession of acupuncture.

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We are not against any other regulated health professionals performing acupuncture; we would like them to perform it, as long as they meet minimum standards set by the proposed college and become certified members of the proposed college of acupuncturists of Ontario. More importantly right now is the business part of the problem. They would also have to pay to keep double membership, double certification—pay both membership fees and the two insurances. They cannot just go and do it without paying the membership and insurance. It's not fair. Vice versa, the other way around: If we want to perform one of their professions, for example chiropractic treatment, we will have to become registered members of the College of Chiropractors of Ontario and pay their dues, their membership fees, their insurance. We cannot simply set our own chiropractic standards and perform chiropractic treatment as part of our practice. No one does that, so that cannot apply to acupuncture either. So we oppose this bill, of course.

For many years now in Ontario, and for a few thousand years in China, acupuncture has been performed safely and effectively by Chinese acupuncturists or herbalists. We support fair and scientific regulation. We

like regulation; regulation is good. But the current Bill 50 will neither enhance safety for the public, nor protect the profession of acupuncture or Chinese medicine. Therefore, Bill 50 is totally, totally unacceptable.

We also want to emphasize one unified title for one health profession, like all other regulated health professions. We do not want multi-titles and multi-standards in one profession, as suggested in section 11 of Bill 50. Every registered acupuncturist should be granted the title doctor of acupuncture, or everyone doesn't have that. For example, as with dentists, you cannot have, "Oh, this dentist has a PhD degree. Give them a doctor of dentistry"—in other words, just register as a dentist. No. No matter how many years of experience you've got, you still need a doctor of dentistry. In one profession, acupuncturist or herbalist, the title should be unified; otherwise, it confuses people.

The name of the proposed college should be accurate and reflect the purpose and content. The title College of Traditional Chinese Medicine Practitioners of Ontario is confusing and misleading, for the same reasons that the term TCM is misleading and confusing. It should be changed to college of acupuncturists of Ontario, if you regulate acupuncture only. You can just regulate acupuncture, as I said. Acupuncture is most commonly used and accepted in Ontario right now.

The Vice-Chair: Mr. Wang, thank you for your presentation. I guess your time's over, finished.

Dr. Wang: Thank you so much for listening to me.

NICK LOMANGINO

The Vice-Chair: Now we call on Nick Lomangino.

Mr. Nick Lomangino: Hello.

The Vice-Chair: Hello. How are you? You know the procedure? You have 10 minutes.

Mr. Lomangino: Yes. I am an acupuncturist and I've been practising now for 13 years. We need regulation, but not like this. Bill 50, I feel, is very flawed.

Number one, multiple standards are unacceptable. We need to have one standard, period, and whoever wants to follow then needs to go through the college of traditional Chinese medicine and acupuncture to get that standard. Otherwise, it's very misleading to the public and/or it jeopardizes the quality of acupuncture as a whole. Right now, if it goes through, the public will think it's regulated and will go to certain places and think that they're qualified acupuncturists, but they will not be. They'll have minimal standards, and that's very misleading.

I talk to all my patients and/or colleagues, and just people off the street, and I tell them that this bill is basically going to allow 26 different professions to regulate their own standard, and they shake their heads. They're confused. It makes no common sense. Because when there's regulation, there's one standard as a rule, more or less. As it stands, these colleges will determine their own standard for acupuncture. Whether it's two days, two weeks, two months, you take that course, you pass it, you're an acupuncturist. Does that make sense? Every-

body I talk to disagrees. They think it doesn't make sense.

I'm trying to get across to you that we need one standard and the college of acupuncture and traditional Chinese medicine needs to set that standard. Whoever, then, wants to call themselves an acupuncturist needs to go to that college and take that course. That's it—final. Otherwise, it's going to jeopardize the quality of acupuncture. In 20 years from now, we're not going to have traditional Chinese medicine any more. It's just going to be washed out. It's going to be diluted. There is a lot of history and culture and theories that go along with traditional Chinese medicine. That needs to be taught. You need to take the time to learn that. It's not just putting needles in people. There's a theory that goes behind that. You have to understand that theory. That theory takes time to understand. So we need one standard for acupuncture, period.

As of now, the bill isn't really clear about grandfathering. There should be a grandfathering clause for those who have been practising for a number of years, whether it's five years or so. Those who are doing adjunct acupuncture—we call it intramuscular stimulation—should be grandfathered, but just as that: intramuscular stimulation, nothing else.

That's pretty much it. Thank you.

The Vice-Chair: Thank you very much. We have a lot of time for questions. We'll start with Mrs. Witmer.

Mrs. Witmer: Thank you very much for your presentation, Nick. You're saying here the bill must be stopped. What amendments do you believe the government should make? What would be your priority? Obviously this bill is going to go through. What must happen in order for this bill to address your concerns?

Mr. Lomangino: Number one is multiple standards. We need to eliminate that. We need to make one standard, period, and the college of traditional Chinese medicine and acupuncture would then regulate that standard.

Mrs. Witmer: Okay. So that's a priority.

Mr. Lomangino: To call yourself an acupuncturist, yes, because it's misleading. Acupuncture has a lot of history behind it. Other people who may have taken a weekend course are using the name and not really using the fundamental principles behind acupuncture. It's like champagne. You can't sell champagne in this country unless it's made in Champagne, France; otherwise, it's just wine with bubbles.

Mrs. Witmer: What about these people who practise acupuncture but don't call themselves acupuncturists? How do you believe they should be treated?

Mr. Lomangino: They should maybe take a course through the acupuncture college and meet a minimum standard. I couldn't tell you, more or less, what that standard would be, but they need to follow that standard, and then they can call themselves intramuscular stimulation technicians so that it's not misleading to the public. When they go there, they know that they're just getting a localized type of treatment, not a rounded, holistic approach, which acupuncture is based on. This idea of

putting needles in for pain is very limited, a very narrow scope. It's disturbing to me and my patients and people I talk to.

The Vice-Chair: Ms. Martel.

Ms. Martel: Thank you very much for your presentation. Let me tell you where I'm coming from. I want to see the practice regulated. I said that in second reading.

Mr. Lomangino: I agree.

Ms. Martel: I also agree that there will certainly be a category of people who define themselves as acupuncturists who will have a much higher standard of training that will be developed by the new college, and they can call themselves acupuncturists. They will have a standard that they have to meet. I also believe there are currently a number of other regulated health professionals who practise acupuncture who should not be called acupuncturists but should continue to be allowed to practise acupuncture, and to get there, we would need a minimum standard for those other regulated health professionals so they can continue to provide acupuncture, but they will not be acupuncturists.

Mr. Lomangino: Or called acupuncturists.

Ms. Martel: Exactly. The legislation now says you can have a TCM practitioner or you can have an acupuncturist, but that implies that you're going to have to have two standards, from my perspective: a standard for those who want to, and rightly should be able to, call themselves acupuncturists and a second standard for a group of people who provide acupuncture in addition to chiropractic, etc.

Would you agree, then, that you need at least a minimum standard for those folks and another standard that the college will also set for people who are going call themselves acupuncturists?

Mr. Lomangino: Yes.

Ms. Martel: And do you have any sense for those other regulated health professionals to allow them to perform acupuncture? What would be a minimum standard they would have to meet? Do you have sense of that? Any suggestions?

Mr. Lomangino: I would say 500 hours through the college of acupuncture and traditional Chinese medicine. They would have to take that course, a minimum of maybe 500 hours.

Ms. Martel: Are there particular institutes or places where they can go to get that in Ontario? Are there a number of educational institutions, or do we have to set those up?

Mr. Lomangino: We have to pretty much set those up, and set it up through the acupuncture and traditional Chinese medicine college, which would then regulate the standard as a whole. Then they would be able to take that course that would allow them to practise acupuncture but not call it acupuncture, so they can still provide the therapies but call it maybe intramuscular stimulation.

Ms. Martel: Do you think the bill needs some definitions—a definition of "acupuncture," for those who will practise under TCM, and a definition for "adjunct modality"?

Mr. Lomangino: Yes.

Ms. Martel: So two different definitions?

Mr. Lomangino: Yes.

Mr. Kular: Thank you for appearing before the committee. As you know, section 3 of the Regulated Health Professions Act reads that the government must ensure that Ontarians have access to services provided by the health professions of their choice. There should be no monopoly of one college.

You say the college of TCM and acupuncturists should handle only acupuncturists. As you know, at the present time I'm a member of the College of Physicians and Surgeons of Ontario. The College of Physicians and Surgeons of Ontario says what is the definition of a physician, what is the definition of a surgeon. In the same way, this is what Bill 50 does. The college of TCM and acupuncture will set these minimum standards so that Ontarians are safe to go to a person on whom they can depend.

Mr. Lomangino: I think acupuncture is not a technique; it's a system, and it needs to be understood. So we need to regulate that system. It's like, "Why can't I do adjustments, since it's a technique?" But no. You have to go through the chiropractic college in order to do chiropractic approaches or techniques. Just like if you're a physiotherapist. "Why can't I do some muscle strengthening and stretches and bill for physiotherapy?" You have to go through the physiotherapy college in order to do so.

Mr. Kular: That's what we think Bill 50 will do. It will set a college of Chinese medicine—

Mr. Lomangino: No, it's not clear at all. It allows all of these different professions to actually make their own standard for acupuncture. That's misleading. We need to make one standard for acupuncture, and it is going to be the traditional Chinese medicine and acupuncture college that will do so, and anybody who wants to take that would have to go through them, period.

The Vice-Chair: Thank you, Mr. Lomangino, for your presentation, and thank you to everyone who has been with us since the morning. Now we are going to recess until 3:30 sharp, please, because—okay, go ahead.

Ms. Martel: Chair, might I ask for some research to be done? I would like to know if health care professionals who are currently members of a college can be regulated under more than one college, and what is the process for that to occur?

Secondly, I would like written clarification for section 18. Particularly under section 18, is it clear that the regulated health professions can practise acupuncture and that will be regulated by their own college, not by a TCM college? And if that's the case, then is there any minimum standard across any of those professions that would say, "If you're going to provide acupuncture, here's the minimum level of training, the minimum level of practice, here's the test you have to pass, etc."

The Vice-Chair: Anything else?

Ms. Martel: No, that's it.

The Vice-Chair: Thank you very much. Now we'll recess.

Oh, sorry, go ahead. Another one.

Mrs. Witmer: One other question: It's been brought up this morning that some of the professions—

The Vice-Chair: This question is for research?

Mrs. Witmer: Yes, for research—that some of those individuals who practise acupuncture and are part of another profession are allowed to bill through OHIP. I'd like to find out who exactly is allowed to bill for acupuncture to OHIP currently.

The Vice-Chair: Any other questions? Now we're going to recess until 3:30 sharp. Thank you very much.

The committee recessed from 1216 to 1530.

CHINESE MEDICINE AND ACUPUNCTURE ASSOCIATION OF CANADA

The Chair: Colleagues and ladies and gentlemen, I'd like to reconvene the standing committee on social policy with regard to Bill 50, An Act respecting the regulation of the profession of traditional Chinese medicine.

I would now invite our first presenter of the afternoon, Professor Cedric Cheung of the Chinese Medicine and Acupuncture Association of Canada. Professor Cheung, and to all gathered here, the procedure is that there will be 10 minutes in which to make your presentation. Any time remaining will be distributed evenly amongst the various parties for questions and comments. Professor Cheung, I invite you to begin now.

Mr. Cedric Cheung: Mr. Chair, committee members, acquaintances and colleagues who have worked hard for regulation, I would like to express profound thanks to the Minister of Health, George Smitherman, and the government of Ontario for introducing and debating Bill 50, an act to regulate TCM and acupuncture.

Bill 50 was first introduced in the Legislature on December 7, 2005, by Minister Smitherman. It has been more than 23 years since CMAAC started lobbying and, in 1994, applied to the Ontario government for regulation. There's no doubt that since the original application was made, many other TCM and acupuncture organizations, along with the regulated professions, have participated in public hearings to finally move closer to the goal.

Should Bill 50 pass its third reading and achieve royal assent, a transitional council would be established and would eventually become the college council, as per the Regulated Health Professions Act, as all other regulated health professions already have their own colleges in place which deal with any complaints regarding their own members. This regulatory college of TCM and acupuncture will establish standards of education and practice for the profession as well as a strict code of ethics. There will be a tiered registration, including the use of the doctorate title, reserved for those practitioners whose competencies and skills reflect the advanced training required.

The regulation of TCM and acupuncture in Ontario is, without doubt, long overdue. This does not do Ontarians any justice or fairness. There are many unqualified practitioners who are practising acupuncture on the unsuspecting public. Unqualified practitioners pose obvious immense risk to the public for the spread of infections such as hepatitis or AIDS from unsterilized needles; internal organs such as the pneumothorax being punctured; miscarriages induced from needles inserted into inappropriate acupuncture points; or even heart attacks in patients with pacemakers by the application of unnecessary electrical stimulation. As well, wrong herbal prescriptions, which are being administered by unqualified practitioners, can give rise to severe medical complications. Not only could patients endure physical harm by these practitioners, but there are documented cases of psychological harm to patients caused by practitioners who do not hold TCM standards and ethics in high regard.

We cannot emphasize enough that, even being passed into law, Bill 50 would not become comprehensive legislation. It primarily establishes a college of TCM and acupuncture similar to the colleges for the other regulated health professions in Ontario. This would be a self-regulating college which would be responsible for many functions, such as responding to complaints, establishing standards for training and continuing education, and ensuring professional and ethical conduct. If necessary, after Bill 50 passes, refinements can be made through the college itself.

There seems to be many specific questions being raised about what may be allowed after regulation. Bill 50 allows practitioners to perform a TCM assessment and treat accordingly, using acupuncture, herbs or a combination of both. There are some questions regarding point injections of herbal substances below the dermis and Chinese orthopaedics, traumatology and tuina. These can be included in the scope of practice of TCM but may require further clarification, which at this point is best done through the college after it is established.

As we proceed to the next phase in the development of the bill, this issue will be addressed in a transparent way, because, unlike BC, the health professions act cannot discriminate against regulated practitioners or prevent them from practising. This is because the intent of the legislation is that other regulated professions have shared scopes of practice. According to the World Health Organization and WFAS, regulated professionals such as medical doctors and physiotherapists could perform acupuncture as an adjunct, provided they become qualified with the requirement of a minimum of 220 hours of training—reference to the constitution of WFAS and the WHO document under, “Guidelines on Basic Training and Safety in Acupuncture.” This will enable these professionals to treat some diseases.

Regulation would improve our visibility and credibility to the public. Tiered registration is necessary, given the wide range of education and experience in the TCM and acupuncture community. This is distinct from the

minimum WHO standard for regulated health professionals and is in the best interests of the public, as it will ensure that all practitioners will be able to perform at the highest level of competency within their scope of practice, whether they are an acupuncturist, TCM practitioner, herbalist or doctor of TCM. This enhances our profile in the public and empowers them to decide what level of treatment they wish to receive. This also enhances the credibility of our profession in the health care field, opening the door to more opportunities in integrated health care, research and even improved third-party insurance, WSIB and Veterans Affairs coverage for our services.

Grandfathering existing TCM and acupuncture practitioners is a given, but the details can only be decided by the transitional council of the college after Bill 50 passes, or it can be addressed in the legislation. Certainly, some time will be required to establish the educational programs and standards, and people will be given the opportunity to meet those standards or even upgrade their level of training.

We hope we have adequately addressed some of the concerns that have already been raised, and that there is no justification for our profession to choose not to regulate TCM and acupuncture in the province of Ontario, as there is no doubt that the passing of Bill 50 will change the face of the health care system, such as the reduction of health care costs and waiting lists. It is time to move forward with our future as one of the regulated health professions.

In closing, we must all focus on humanity in order to improve the health care system of Ontario. Only by passing Bill 50 will the safety of Ontario be assured.

The Chair: Thank you, Professor Cheung. We have about a minute per side, beginning with Mrs. Witmer of the PC caucus.

Mrs. Witmer: Well, thank you very much, Dr. Cheung. You certainly worked long and hard, and obviously you're thrilled that Bill 50 is in front of us at this point. Is there one recommendation you would make that could be added to the bill that you think would improve the legislation?

Mr. Cheung: With my limited knowledge of the legislation, I trust that the government of Ontario will address the main issues in Bill 50 and will guarantee the safety and protection of the public as a top priority. I believe that the government of Ontario will address other detailed issues, that maybe in the transitional council to be set up or in the college.

The Chair: Thank you, Mrs. Witmer. Ms. Martel.

Ms. Martel: Thank you, Dr. Cheung, for being here. I'm going to focus on the World Health Organization guidelines because those guidelines, developed in 1999, set out standards for physicians. Not so much for other regulated health professionals, but even for physicians it suggests that 200 hours of training would be required to practise acupuncture. Under the bill, a number of other health care providers can practise acupuncture, but we have no set standard—no minimum number of hours, no

maximum number of hours—about which kind of training they should receive in order to be able to practise acupuncture. Do you have concerns about that? Do you think we should be looking at the WHO guidelines or some other guidelines?

Mr. Cheung: The 1999 guidelines are under the WHO. I have clarified, as you know—I am also the chair of the legislation committee of WFAS—that WFAS has quotas, and also the WHO. The director of traditional medicine in WHO, Dr. Zhang Xiaorui, and has clarified that physiotherapists should be allowed to use acupuncture in their job as well, although in the guidelines only physicians are mentioned.

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Ms. Martel: That's right.

The Chair: Thank you, Ms. Martel. To the government side.

Mr. Cheung: The number of hours of training is the same for physiotherapy.

The Chair: Mr. Fonseca.

Mr. Fonseca: Thank you, Professor Cheung, for your presentation. With Bill 50 and the regulation of traditional Chinese medicine, which is long overdue in bringing forward the best practices when it comes to acupuncture, would you say it will help the other regulated professions that today perform acupuncture, even raise their standards, or to look at the college of traditional Chinese medicine for further best practices? We're always in an evolutionary mode towards better practices when it comes to medicine.

Mr. Cheung: I believe, also my organization believes and my colleagues believe, that integrated medicine is very important in the health care system. If other regulated professionals practise acupuncture in adjunct within their scope of practice, it should be able to guarantee the safety of the general public. Although we are limited in our training, that doesn't mean that—

The Chair: With respect, thank you, Mr. Fonseca, and thank you as well, Professor Cheung, for your deputation on behalf of the Chinese Medicine and Acupuncture Association of Canada.

CHINESE MEDICINE AND ACUPUNCTURE CLINIC

The Chair: I would now invite our next presenter forward, and that is Dr. Yifang Tian of the Chinese Medicine and Acupuncture Clinic of Waterloo. Dr. Tian, please come forward and be seated. As you've seen, you have 10 minutes in which to make your deputation. I invite you to begin now.

Dr. Yifang Tian: Good afternoon, Mr. Chairman.

Dear all, My name is Yifang Tian. I am the general secretary of the Chinese Medicine and Acupuncture Association of Canada, but today I represent the Chinese Medicine and Acupuncture Clinic in Waterloo, Ontario.

There are three points I would like to emphasize here today. The first one, section 9 of Bill 50, I think is a

practical method right now for the complexity of the acupuncturists' situation in Ontario.

As you all know, a part of Bill 50 targets against us. I would say, however, that not only in Ontario but also in the world, even in China, different kinds of people are doing acupuncture and traditional Chinese medicine. History has made this happen. This is a reality. The government can start regulating and gradually improving it. Different colleges, the governing bodies, should ensure their members' actions. In fact, professions like chiropractic, physiotherapy or even massage already have college and university training. They have basically medical training, so I would not worry about them doing acupuncture and causing any harm, compared to some other acupuncture organizations' members, because, as I know, some organizations took membership without any qualifications, without any basic medical training at all. It is they we should worry about doing harm to the public's health.

The second point: For more than five years, do you know that an organization called the Ontario acupuncture exam qualification committee has been advertising and has misled the public, saying they are the authoritative TCM and acupuncture governing body in Ontario? A lot of people have paid them big money to take their exams and be certified by them. Who has given them the authority? Ironically, this group is the core against us of Bill 50. Of course, once the real and legitimate TCM and acupuncture governing body stands up, they will be in trouble.

The third point: Today, TCM and acupuncture are in fact a popular part of the well-being of Ontarians and need regulation, as do others.

In 1989, I came to Ontario, Canada, as a recipient of the Cystic Fibrosis Foundation from China. I was a doctor and an assistant professor at the Chengdu University of Traditional Chinese Medicine. I came here to do research to develop a vaccine. I finished my master's in immunology and microbiology at the University of Guelph. I opened a clinic in Guelph, and since then in Waterloo.

The ages of my patients range from a newborn baby to 99 years. Families have up to four generations under my care. All different kinds of people come to me: the poor, the rich, mayors, lawyers, doctors, dentists—anyone. All classes of people come. The problems they want me to help them with are very wide-ranging, including arthritis, Parkinson's, cancer, stroke, many chronic illnesses, and even infertility. So I think I'm part of the community.

I told my community I needed to come here to address a serious point. I don't have more to say. I'm actually in Mrs. Elizabeth Witmer's riding. For a few years I've tried to go to your office, but I never found the time to make an appointment. I'm so glad and so grateful today that I could come here to make my point. Thank you to all.

The Chair: Please be seated, Dr. Tian. We have about two minutes or so per side, beginning with Ms. Martel of the NDP.

Ms. Martel: Can I go to your point 1? When you say number 9 of Bill 50, I don't understand what that is.

Dr. Tian: Number 9 says that chiropractors, physiotherapists or any person who does acupuncture should be qualified by their own governing body. This is a core target for those who are against this. Acupuncture shouldn't just have one standard; we can have multiple standards. At the beginning, I thought this was so true, but decisions have to be made. I go to conferences every year throughout the whole world, and I know that in every country, people pick up acupuncture gradually and work on it because it has some use. Many different kinds of professions like to pick up this tool to help people and for it to be part of their practice. We should welcome them. But of course, different governments have different situations.

The same thing happened in Ontario. I was at the traditional Chinese medicine university for 18 years—full time, six days a week—and I got my MD in traditional Chinese medicine. But of course, some people study acupuncture over a few weekends. Then compare how we help people, some with quitting smoking and some with body pain. For me, I can help people more.

I'll give you one example. Seven years ago, one patient, a lady, had severe—

The Chair: Dr. Tian, with respect, I will have to offer it to the next party. We'll give it to the government side.

Mr. Fonseca: Thank you, Dr. Tian, for your presentation and for addressing many of the abuses that have taken place with traditional Chinese medicine and acupuncture in the province of Ontario, something we want to stop by regulating traditional Chinese medicine. Through this process, as a governing council and transitional council are formed, we want to make sure that traditional Chinese medicine has a place here for all the people in the province of Ontario.

Through many of the other regulated health professions we have throughout the very large province of Ontario, we want to make sure there are many Ontarians who have access to acupuncture. Many are receiving acupuncture, as I have, in communities throughout Ontario within the scope of some of the other regulated professions. I understand that your expertise and scope of practice may be larger, but many Ontarians are receiving some very beneficial health treatment through the other regulated professions.

The Chair: Thank you, Mr. Fonseca. We'll move now to Mrs. Witmer.

Mrs. Witmer: Thank you very much, Dr. Tian, for being here today. You expressed in number 2 a concern about an organization that you believe is not providing accurate information to the public.

1550

Dr. Tian: Yes, for more than five years now. A lot of people have even said to me, "You should take the exam from them." As far as I know, they're still running, and they're even advertising in the Yellow Pages and through the Internet. If you need to know, I am surprised. Mrs. Witmer, they are the members that you mentioned last

time; you said that we should think about their request. They are the core group against Bill 50. I think this is one reason they are so against it.

Mrs. Witmer: How many clients in our community of Kitchener-Waterloo would you serve at your clinic? Would you have quite a huge—

Dr. Tian: I don't have an estimate. I can tell you that sometimes I treat 20 patients a day and sometimes less. I have different classes; even MPPs come to my office. I have family doctors who I help. They try to do acupuncture themselves, but when they have tough cases, they tell their patients, "You should go to this lady." So I'm proud to be part of the community. I'm helping people there.

This one lady had a severe, congenital—the chiropractor didn't help her, but then she came to me and I helped her. The neurologist said to do surgery, but the insurance wanted to pay the chiropractor, and now I help her. She still owes more than \$600, because I want to help her. It's been 10 years now. I just think I've helped people there.

Mrs. Witmer: Thank you very much for coming. I really appreciate your presentation.

The Chair: Thank you, Dr. Tian, for your deputation on behalf of the Chinese Medicine and Acupuncture Clinic of Waterloo.

PROFESSIONAL ACUPUNCTURISTS ASSOCIATION OF ONTARIO

The Chair: I would now invite our next presenter, Mr. Raymond Yeh, president of the Professional Acupuncturists Association of Ontario. Mr. Yeh, as you've seen, you have 10 minutes in which to make your presentation, beginning now.

Mr. Raymond Yeh: Good afternoon, Mr. Chairman and committee. I bring you greetings from the Professional Acupuncturists Association of Ontario. First, I would like to thank this committee and the Ontario government for the opportunity to make our presentation here today on behalf of the PAAO.

The Professional Acupuncturists Association of Ontario was one of the original four organizations that called on the Ontario government to regulate traditional Chinese medicine and acupuncture. Our goal has always been to protect the safety and the interests of the public and to uphold the integrity of qualified practitioners in this profession.

Over the past 15 years, we have had the privilege of attending and participating in numerous public hearings and committee meetings. I can still remember, during the early years, that there was an argument about whether acupuncture and traditional Chinese medicine were really effective forms of treatment. There were also arguments between different organizations about whether acupuncture should be regulated on its own without traditional Chinese medicine, because that would be an easier route to go. In the last 15 years, the number of organizations involved in this profession has mushroomed, I estimate, to over 100. Some are legitimate; many are not.

Sitting in the Legislature at the end of last month, more specifically September 27, and listening to the various members of Parliament debating the merits of Bill 50, it was clear to me that the Ontario government understands the importance and urgency of regulating acupuncture and TCM. It was also clear to me that various members from both sides of the aisle were genuinely interested in having a bill that would protect the public and also give credibility to those qualified practitioners in the profession.

I think it's important for the Ontario government and the public to understand that although the members were concerned about a lot of opposition coming from different groups, most of this opposition comes from a few individuals who present themselves as different organizations. Some of these organizations criticizing Bill 50 as not tough enough to protect the public are also the same groups that 10 or 15 years ago were trying to push through acupuncture by itself. Allow me to speak very frankly: If this group of people have their way, they would not mind seeing the present situation of an unregulated nature in Ontario to continue for another 15 or 20 years. That way, they can keep on practising acupuncture in Ontario without having to justify their own qualifications to anybody. I think Dr. Tian, who spoke in front of me already, touched a little bit on people setting up an examination committee. Lots of people, especially new immigrants from China and other countries, have been fooled and paid big money; they thought this was a legitimate examination that would give them legitimacy to practise acupuncture in Ontario.

Ladies and gentleman, Bill 50 may not be perfect, but at least it gives us a starting point to regulate acupuncture and TCM in Ontario. Bill 50 is not meant to exclude anybody from practising acupuncture and TCM in Ontario. Nor is it a bill to favour any particular organization. Bill 50 will allow the Ontario government to work with those who are qualified in this field to begin regulating certain standards so that the public interest will be protected. I think it is high time that the government and the Ontario public know what is going on. We have to commit ourselves to do the right thing and regulate TCM and acupuncture as soon as possible.

The Chair: Thank you, Mr. Yeh. We have about 2.5 minutes per side, beginning with the government.

Mr. Fonseca: I'd just like to thank Mr. Yeh for his comments. I think he got right to the point: It's about moving forward and fixing something that is definitely broken here in Ontario and to give the people of Ontario the assurance that they want in traditional Chinese medicine, working with partners like yourself and others that have come forward for the betterment of everybody rather than some groups, yes, that have been out there that have been really not looking to move forward. So I thank you once again for your comments. Is there anything else that you would like to add as we regulate traditional Chinese medicine and as we bring it to this transitional council, what you'd like to see, some of the things that you would like to see?

Mr. Yeh: Definitely. I think Bill 50 will give us an opportunity to start working towards regulation. From our perspective, we are not trying to exclude anybody. We have mentioned many times that we would welcome those who are qualified, noting that they might have different educational backgrounds or clinical experience. All that has to be taken into consideration. If somebody is genuinely interested in using TCM or acupuncture to help the public to ease pain or suffering, they have nothing to be afraid of, because we will be working very closely with the Ontario government, trying to implement a future college which would include everybody and put everybody into different categories based on the education and experience they have.

The Chair: Thank you. We'll now move to the PC side.

Mrs. Witmer: Thank you very much, Dr. Yeh. I think everybody has agreed that they do support the regulation of the profession. Bill 50 will obviously, in some shape or form, be approved at the end of the day, and it will move forward. I guess what I heard you say—you made some statements indicating that those people who maybe were recommending that there be changes or who didn't support the bill in its present form wanted to make sure that there was no regulation whatsoever. Those are some pretty serious allegations. I would just say to you, do you believe that to be true? I'm a little bit concerned about that because obviously what we want to do is protect the public. So to hear you say that, I was quite surprised.

Mr. Yeh: I was at the Legislature on September 27 and I heard the arguments on both sides of the aisle. The feeling I came away with is that the government on both sides is genuinely interested in pushing through a bill that would protect the public. I guess you have to forgive me for speaking very frankly. What you asked me about I know is true, because I have had personal experience with different groups over the past 15 years. A lot of these groups actually have cross-appointments, so you're talking about a small number of people, not 15 or 20 different organizations with thousands of people opposing Bill 50.

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Mrs. Witmer: Obviously, we want this bill to be the best it can be. I've been in government myself, a cabinet minister, and there's always something you can do to improve a bill. There truly is. You don't have the monopoly on all that's right. Is there anything here, any change that we could make that you think would help to satisfy some of the individuals who obviously have concerns that they believe are legitimate?

Mr. Yeh: Yes, I agree with you—

The Chair: With respect, I will have to move it forward and offer Ms. Martel the floor.

Ms. Martel: Thank you for making the presentation. I view public hearings as an opportunity for people who have concerns to come forward and suggest how the bill could be made better, and that's why I pushed for public hearings. The concern that I continue to have is that I am most interested in protecting the public, and I am unclear

as to how we are going to protect the public if each different regulated health care profession sets its own standard with respect to acupuncture. I would be far happier if the government or the TCM college said very clearly to all the regulated health professionals, "This is the minimum standard we expect you to have in order to practise acupuncture."

Mr. Yeh: That has been our hope for the past 15 years. We were hoping the government would step in and work with the whole TCM and acupuncture profession. Like I mentioned at the beginning, Bill 50 may not be a perfect bill, and we are not, from our perspective, trying to exclude anybody. We would like to work with those groups that are in opposition. We want to be inclusive. We want everybody to work together. But understand, they all have different educational backgrounds and clinical experience, so setting minimum standards would protect the public at a minimum level. On top of that, as the future college progresses, then we'll have to set certain standards; for example, different titles to reflect different educational backgrounds and what kind of serious complications they can treat.

Ms. Martel: But that's for the TCM practitioners and the acupuncturists themselves. My concern is for the group of regulated health professionals who are not acupuncturists or TCM practitioners but who also, as part of their profession, provide acupuncture for pain management. As a consumer, I would like to know, regardless if I go to see a physiotherapist, a registered massage therapist or a chiropractor for acupuncture, that that person has a minimum level of education, a minimum level of training, and has passed a certain test or exam that allows them to practise.

The Chair: Thank you, Mr. Yeh, for your deputation and presence on behalf of the Professional Acupuncturists Association of Ontario.

JANE CHEUNG

The Chair: I'd invite our next presenter, Ms. Jane Cheung. Ms. Cheung, I invite you to be seated. As you've seen, there are 10 minutes in which to make a combined presentation, beginning now.

Ms. Jane Cheung: Standing committee members and fellow colleagues, thank you for allowing me to speak to you this afternoon regarding the upcoming regulation on TCM and acupuncture in Ontario.

I would like to begin by introducing myself briefly. Coming from a family of TCM practitioners, my training consisted of a four-year program of TCM and acupuncture, which I completed after a bachelor of science degree. I also did a one-year clinical apprenticeship at the Nanjing University of TCM and passed my A level examination in China. I am a board member of CMAAC and participate in the education committee of CMAAC. Currently, I am practising TCM with the application of acupuncture and herbal prescriptions at the Oshawa Clinic, which is the largest private practice in Canada.

I support Bill 50 and look forward to the regulation of TCM and acupuncture in Ontario. I feel it is essential that

this bill pass, for the good of both the public and the profession. In terms of public good, regulation of TCM and acupuncture enhances public safety, improves patient choice, will likely improve patient access, and may even help with wait times and medication costs in Ontario.

Public safety is a must. Currently, the public has no assurance that the practitioner performing acupuncture on them has trained any length of time, met any minimum standard of competence, or even takes basic precautions against spreading infectious disease. For example, there was a huge case two years ago in Toronto where a practitioner unwittingly spread a fungal infection due to inadequate sterilization techniques. We need to ensure that all practitioners in the province are able to provide TCM and acupuncture services in a safe manner.

The level of competence of the practitioner affects both the safety and effectiveness of their treatments. I feel that the proposed tier system is ideal as it is able to allow practitioners with less training and experience to practise but also limits the complexity of the diseases that they are able to treat. I feel that the public will be reassured once they understand the level of competence that each tier of training represents. I know that some current practitioners are apprehensive about whether they will be able to practise after regulation becomes a fact. I believe that everybody currently practising should be grandfathered for a certain time while the new college establishes its schools and standards. After that time, the college will have to decide on what standards are necessary for everybody to meet. This may be some combination of years of training and years in practice, or perhaps everybody will have to pass an exam. The tier system, including recognizing a doctor of TCM where appropriate, will also improve patient choice. I feel the people of Ontario would like to be able to judge the quality of health care that they may be receiving, and that those seeking the highest level or with the most complex cases might prefer to be seen by somebody with doctor of TCM qualifications.

In the future, I hope that we will be able to collaborate with the other health professions and provide care as a team, further enhancing patient choice. Establishment of professional standards is the obvious first step down the path. I'm sure that patient access to TCM and acupuncture will benefit after regulation. I have found that currently with private insurance plans do have some amount of coverage for acupuncture; however, in most cases the acupuncture must be provided by somebody who is a regulated health professional or a naturopath. So the current situation is that I have people who end up having to see a physiotherapist or naturopath in order to have acupuncture, even though acupuncture is an adjunct treatment method for those health professions and my qualifications and experience in acupuncture would allow for more advanced treatments. With TCM/acupuncture becoming regulated, I feel that insurance coverage for my treatments can finally become a reality and this barrier can be removed.

With increased use of TCM/acupuncture, I believe that the personal and public burden of some conditions can be

greatly reduced. For example, with treatment, arthritic patients not only benefit from decreased pain and increased joint function, they also may not need to use as many anti-inflammatories, thereby saving on medication costs as well as the potential cost of bleeding ulcers. In China, with the use of TCM/acupuncture, they have found that fewer people need to be on the waiting list for joint replacement.

Another example was described by Liberal MPP Richard Patten during the second reading of Bill 50. He referred to a study which showed that hospitalized stroke victims treated with acupuncture had an almost 50% reduction in the length of their hospital stay. This alone can translate into millions of health care dollars saved. The government of Ontario is aware of the potential cost benefits of regulating TCM/acupuncture in the current environment of ever-increasing health care spending.

As far as the good of the profession, I have already discussed the potential improvements in patient access through insurance coverage and likely improved collaboration with other health professions. There would also be the benefit of improved public awareness of TCM and acupuncture and how our treatment differs from other professions who perform acupuncture. There would also be the public assurance that members of our college meet professional standards in knowledge, competency, safety and ethics.

We may also receive more referrals from other health professionals once we are regulated. I know that Dr. Linda Rapson, executive president of the Acupuncture Foundation of Canada, has mentioned before that there have been cases where their members have wished to refer patients to TCM and acupuncture treatments but have been hesitant due to the lack of standards. I should mention that AFC members are other regulated health professionals that have taken acupuncture training and used acupuncture as an adjunct. In my personal experience at the Oshawa clinic, I have received referrals from medical doctors and physiotherapists, especially in the tough-to-treat or complex patient populations. I've even had referrals from some doctors to assist their patients where the medical problem is not yet diagnosed.

There have been some concerns raised from within the TCM/acupuncture community itself which I find difficult to understand, especially when we all have the common goal of protecting the public. Further delay allows more potentially unqualified practitioners to begin practising and therefore be grandfathered after regulation.

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One of the concerns these individuals have expressed regards other professions still being allowed to perform acupuncture after regulation, especially as there is no minimum standard for their training. I find this is very odd as I know that medical doctors and nurses in China have been using acupuncture as an adjunct for years. There's even a WHO guideline for 220 hours of training for health professionals to become qualified to use acupuncture as an adjunct. I believe that every college has to

regulate their own members, so each college will have to decide what their standards will be. The new college of TCM and acupuncture can certainly provide input regarding standards and ensure that creditable acupuncture training is available to these other professions. At least with regulation the performance of acupuncture is limited to certain health professionals. This is far superior to the current, completely unregulated situation in Ontario.

Another concern that is mentioned is that Bill 50 does not mention diagnosis or TCM diagnosis being performed by practitioners. I believe this is due to "diagnosis" being a special term in Ontario, as it describes one of the controlled acts. The bill does allow for TCM assessment, which does not translate directly to diagnosis in Western medicine anyway. Classical TCM assessment does not require X-rays or lab tests, and our treatment plan will always be determined by the TCM assessment, not the Western medical diagnosis. We are still able to provide herbal and acupuncture treatments in Bill 50. I do not feel that Bill 50 prevents professionals from functioning any differently than they do currently.

If there are further questions or details that need explanation, the new college of TCM and acupuncture can pursue them on behalf of our profession. It is even possible to apply for inclusion of a controlled act into our scopes of practice in the future through submission to the Minister of Health and HPRAC.

In closing, there are a variety of reasons for the government to pass Bill 50 and set up the college, and many reasons for this to happen sooner rather than later. TCM and acupuncture in Ontario are currently unregulated, which puts the public in danger and allows our professionalism to be questioned. The passage of Bill 50 is a necessity that enhances public safety and confidence, improves our professional image and future prospects, and will benefit the health of Ontarians and even the health care system of Ontario.

The Chair: Thank you, Ms. Cheung. We've got 20 seconds each, beginning with the official opposition.

Mrs. Witmer: I will thank you very much; 20 seconds is not much time.

The Chair: Thank you, Ms. Witmer. Ms. Martel.

Ms. Martel: Very briefly, on second reading debate I suggested that the colleges could look at the WHO guidelines as a minimum standard. If they actually did that, I'd feel much more comfortable. The problem is, if you look at the different colleges, they have a wide variety of standards for their professions who are practising acupuncture, and that's what I'm trying to get at.

The Chair: Thank you, Ms. Martel. Dr. Kular.

Mr. Kular: I just want to thank her for really elaborating on all the issues. I think that the government is really doing a wonderful job by bringing this bill forward. It would definitely set up a college which would set these standards for traditional Chinese medicine and acupuncture.

The Chair: Thank you, Ms. Cheung, for your presence and deputation.

COMMITTEE FOR CERTIFIED ACUPUNCTURISTS OF ONTARIO

The Chair: I invite now our next presenter, and that is Luheng Han, chair of the Committee for Certified Acupuncturists of Ontario. Mr. Han, I invite you to begin. As you know, you have 10 minutes in which make your presentation, beginning now.

Dr. Luheng Han: My name is Luheng Han and I am the chairman of the CCAO and the president of the Ontario Acupuncture Association. On behalf of 265 of our members, I'm here firmly opposed to the current draft of Bill 50. So far, this bill is endangering public safety and is discriminatory and full of flaws. Unless all the mistakes and flaws are changed fundamentally, we strongly urge the government and all the opposition parties and all members of Parliament to oppose the bill and not make the bill into law.

The following are the key issues.

To exempt all 23 regulated health professions from any minimum standard and any minimum requirement to perform acupuncture in Ontario and let all 23 colleges which do not have anything to do with acupuncture, nothing in their scope of practice, do not possess any qualification or any capability, to make whatever standard they want—it can be five hours, it can be two hours, it can be nothing—to perform acupuncture is a shame.

Acupuncture is an invasive treatment. Most of these regulated health professions are not allowed to perform any invasive treatment. This bill directly contradicts all the existing health regulations. Also, by allowing this one, this government will allow people who are incompetent to perform acupuncture and avoid any legal responsibility. So we think it is irresponsible.

The second question is about the “doctor” title. In this bill, the “doctor” title is hypocritical and very misleading. Unlike any other doctor in other regulated professions, the TCM doctor does not have any authority to communicate a diagnosis, write a prescription or order a medical test. Please stop playing this type of political trick. If the TCM profession deserves to be doctors, then grant them the “doctor” title with the same authority and legal right, like any other regulated health profession. If the TCM profession does not deserve the “doctor” title, don't give it to them; call them something else.

If the “doctor” title is here to stay, it must be issued to protect the integrity of the name of “doctor.” We believe an equivalent to other doctors in other professions—equivalent education—should be mandatory and detailed in this bill. It should be mentioned clearly in this bill.

Finally, on behalf of all our members and the majority of the profession's practitioners, we hope the members of this committee look into this bill with their hearts to see—if their family members take acupuncture if this bill is really in place—what will happen? And don't play any political games and don't put the political agenda ahead of the public safety interest.

The Chair: Thank you, Mr. Han. We have a fair amount of time left over. We'll begin with the third party. Ms. Martel.

Ms. Martel: Thank you for your presentation today. What would you think should be a minimum standard for the 23 regulated health professions to practise acupuncture as an adjunct therapy?

Dr. Han: I think they would have to have the equivalent training like the TCM acupuncturists. But we do believe that we are able to set a proper minimum standard. It can be 200 hours. We can have the professional consultation—we can get that—of 300 hours, 500 hours, even 200 hours. All the preliminary education and training can be counted together, but they have to have one minimum standard for all. You cannot allow physiotherapists to put in a needle after five hours of training or no training and without any legal responsibility because the law exempts them and protects them. Also, I believe that all other regulated health professions, if they want to perform acupuncture, should be registered with the TCM college under one umbrella and under control. It does not have to be equal hours for the training as the TCM acupuncturists, but they should have one standard for all of them, all 23, and under one umbrella for supervision and control.

Ms. Martel: So for those who are currently practising where there is not a standard in place, we grandfather those health care practitioners—like physiotherapists and chiropractors—who are now practising? Would you grandfather them and then the new standard applies to new people who want to practise?

Dr. Han: It's very simple. I think this one can be discussed in the future TCM college to find a proper way. But I do realize the reality in the province. Many—

The Chair: Thank you, Ms. Martel. We'll now move to the government side. Mr. Fonseca.

Mr. Fonseca: Thank you very much, Mr. Han, for your passionate presentation. I have to say that we agree with you, and we're on the same side when we're looking after the safety of Ontarians. The regulated health professions, the 23 that you talk about, are held, as traditional Chinese medicine will be held, to protect the public, to look after safety, to be accountable. All of these regulated professions have quality assurance built into them. They make sure that what they're doing has efficacy, is in the greater good of all Ontarians, and looks after their safety.

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As we move forward, this will also happen with traditional Chinese medicine as it is regulated. What you can be assured of is that only under traditional Chinese medicine will somebody be able to call themselves an acupuncturist. Others will continue acupuncture in their scope of practice, but only under traditional Chinese medicine will somebody be able to call themselves an acupuncturist.

Dr. Han: You're trying to explain something to me; it's not a question. Actually, I have a question for you: If a physiotherapist who trains for five hours performs acupuncture, do you think that's okay? With this bill, that is okay. Can you answer that question for me? You can't. In this bill, is it allowed for a physiotherapist to decide, “I'm going to do it after I train for two hours, regardless

of whether I'm qualified, because I make my own rules." You think that's okay?

Mr. Fonseca: May I respond, Chair?

The Chair: It'll have to be rhetorical. I now offer the floor to the opposition side.

Mrs. Witmer: Maybe we can have an answer to that question from the ministry staff who are in the room. Is that the interpretation?

The Chair: Mrs. Witmer, I'm advised by the clerk that because we have a speaker on the floor, we'll be addressing the speaker.

Mrs. Witmer: Okay. Thank you very much. You've indicated here on the last page that you believe 95% of TCM/acupuncture practitioners are against what's being proposed here.

Dr. Han: Yes.

Mrs. Witmer: That's 95% of those in the province of Ontario who consider themselves TCM/acupuncture practitioners.

Dr. Han: Yes. I'll give you just one simple example. We had a news release here in this building. Just before we got that one, the Ministry of Health—you know, it's just so annoying. They had a few people. In fact, I can use two hands to count for you the number of people who support it here today, like Professor Cedric Cheung. He's here, his brother-in-law is here and his daughter is here, so you can use one family to support the bill when all the others do not. This bill is not regulated for one family or for one group; this is for the people of Ontario. It's not even for TCM practitioners. I think we should look at what is best for the public and nobody else, not even TCM practitioners. So that's why I said to delete those who do not deserve to have the TCM "doctor" title.

Mrs. Witmer: What, then, are you recommending the government do, just very simply? What do they need to do?

Dr. Han: I would say to put it like Shelley did: have one minimum standard. It can be 200 hours, it can be 500 hours. Look at the reality of all 23 regulated health professions. We are not opposed to them doing it; that's not the question. It's about public safety. Put them into the TCM college. They don't have to call themselves acupuncturists, so they don't have to train for 3,000 hours. Even Dr. Cheung said—

The Chair: Thank you, Mr. Han, for your deputation on behalf of the Committee for Certified Acupuncturists of Ontario.

ONTARIO GUARD OF TRADITIONAL
CHINESE MEDICINE PROFESSIONALS

ONTARIO COALITION FOR UNBIASED
REGULATION ON ACUPUNCTURE
AND CHINESE MEDICINE

The Chair: Our next presenter will be Shiji Liu, the representative of the Ontario Guard of Traditional Chinese Medicine Professionals. It's my understanding that you are empowered by your association to read the

deputation but not to answer questions. Is that correct, Mr. Liu?

Mr. Shiji Liu: Yes.

The Chair: I'd invite you to begin. You have 10 minutes.

Mr. Liu: Good afternoon, everyone. Today, on behalf of Mr. Guo Ping Liang, the chairman of the Ontario Guard of Traditional Chinese Medicine Professionals, and the Ontario Coalition for Unbiased Regulation on Acupuncture and Chinese Medicine, I'm going to make a speech concerning Bill 50.

The Ontario Coalition for Unbiased Regulation on Acupuncture and Chinese Medicine declaration: The Ontario Coalition for Unbiased Regulation on Acupuncture and Chinese Medicine is formed spontaneously and voluntarily by acupuncture and Chinese medicine practitioners in Ontario. The goal of the coalition is to safeguard the rights and interests of acupuncture and Chinese medicine practitioners in Ontario. Imperative action must be taken at this critical moment to seek the unbiased and fair regulation of ACM in Ontario. Regarding Bill 50, the pending ACM legislation, the coalition hereby proposes the following solemn statements:

(1) The legislative process of Bill 50 was fundamentally flawed right from its initial consultation, through the first reading to the second reading by the Ontario Legislature. The Ministry of Health and Long-Term Care has not considered our strong objections at all to certain content in the bill. The ministry shows utter indifference to our feedback concerning the legislation to date. Now the Liberal government has pushed the bill through second reading without making any amendments requested by the vast majority of ACM practitioners. We have no choice but to oppose Bill 50 from now on. We will never accept this biased bill before necessary major amendments are made.

(2) For many years in Ontario and for several thousand years in China, acupuncture has been performed safely and effectively by acupuncture practitioners. To enhance safety for the Ontario public and to provide protection for the profession of acupuncture and Chinese medicine, we support fair, balanced and scientific regulation for ACM. But we absolutely cannot accept Bill 50 as it is now.

(3) Acupuncture must be regulated as a health profession as it has been regulated in many other jurisdictions. We strongly oppose Bill 50 for failing to protect acupuncture as a health profession.

(4) We oppose the current Bill 50 because the bill would neither provide protection for the public nor show respect for the profession of acupuncture and Chinese medicine. Bill 50 allows various standards to be applied to the acupuncture profession. To have a lot of standards applied in acupuncture is no different from having no standards at all, and simultaneously it discriminates against the acupuncture and Chinese medicine practitioners who hold legal licences now. This would create a great threat to the safety of the public. At the same time, it defeats the purpose of regulating a profession.

(5) Bill 50 fails to define the scope of acupuncture and Chinese medicine, and therefore it is senseless. It violates the fundamental rights and interests of the ACM industry. The bill would limit and hinder the future development and application of acupuncture and Chinese medicine in the province of Ontario.

(6) We call on the Honourable Dalton McGuinty, Premier, to question the Ministry of Health (a) why they refuse to listen to the concerns from the vast majority of acupuncture and Chinese medicine practitioners, and (b) why they introduce and insist on passing the unjust, unbalanced, unscientific Bill 50 without making amendments.

(7) The Liberal government shall be held responsible for any and all possible consequences of passing this bill. We will never surrender our legal rights nor accept the injustice. A class-action lawsuit will be launched, should this bill be passed into legislation.

The Chair: Thank you, Mr. Liu, for your deputation on behalf of the Ontario Guard of Traditional Chinese Medicine Professionals. As I understand it and as I mentioned at the outset, you are here to read your deputation but not to take questions.

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TRADITIONAL CHINESE MEDICINE PHYSICIANS ASSOCIATION OF CANADA

The Chair: With that, I would now therefore invite our next presenter, Mr. Adam Chen, president of the Traditional Chinese Medicine Physicians Association of Canada. Mr. Chen, please begin.

Dr. Adam Chen: Thank you to the committee. First, just a brief introduction of TCMPAC: The Traditional Chinese Medicine Physicians Association of Canada was registered federally in 1998. We have a standard of who can join the association and who cannot, so there is a minimum of training. A full member has to be fully trained as a TCM practitioner.

To talk about myself, I graduated from a traditional Chinese medicine university in China, and when I came to Canada I got my master's and PhD in genetics at the University of Alberta. I was the founder of the first, probably the only, program to teach acupuncture at a publicly owned institute, at Michener. Also, I was the founder of the first hospital-based training program, at Mount Sinai Hospital. Currently, I work at St. John's Rehabilitation Hospital.

On behalf of my association, I will talk about just four aspects. The first point is that the association fully supports Bill 50; the second point is about who will be allowed to practise and what the standard is; the third point is regarding the "doctor" title; and the fourth, and last, point is about grandfathering.

First, our association is in support of Bill 50. There are various reasons, and I think one that's very important is that in the current situation, anyone can practise without certification, without qualification, or with some qualification through their regulated health professional asso-

ciation and so on. So it's a chaotic situation and it poses a great danger to public health. With Bill 50, some of the people who are not qualified will be out. At the very least, it will be healthier and safer for the public to have a bill like this. Of course, this bill is not perfect. That's why we want to make our other points, in the hope that this bill will be improved so as to ensure more efficient and safer treatment for Ontario citizens.

The second point is about who will be allowed to practise. We believe that one authoritative organization, which would be the newly formed TCM/acupuncture college, should have a say as to who will be allowed or what minimum requirement, what core competency, needs to be reached to practise, either for current or future TCM/acupuncture practitioners or current regulated health professionals. Why? Because, as proposed by Bill 50, 23 regulated health professions may currently practise. They have a right to set a standard, so there will be 23 different standards. The future college will have no say in these standards.

Of course, we have to trust that these regulated health professional organizations will not do harm to the public; however, due to their limited knowledge of the whole field of TCM/acupuncture, it's difficult, if not impossible, for them to set a standard for each college. It's the same as the TCM college setting the standard for them to practise certain parts of a chiropractor's or a massage therapist's or a physiotherapist's action, that the TCM college can assure its safety. That's not enough. We also look at efficacy as well, so that the new college, with a group of professionals in this field, would have the best knowledge and the right to have a say. So that's the second point.

The third point is about grandfathering. We understand that people can learn TCM acupuncture knowledge through various ways, some through just a simple apprenticeship and some through formal training or taking short courses. We need to respect people who practise for 20 or 30 years and have ample amounts of clinical experience. We don't want to bury this tremendous treasure.

However, there are also ways to assess their competency and ability. There are existing ways that we can borrow. For example, in BC there are examinations, and the US has come to assess acupuncturists and TCM practitioners. Mainland China and other countries have had formal TCM training programs for many years. We can borrow these ways to assess these practitioners, not just on how many years you practise, which warrant your getting to practise automatically. We have to assess whether you have this ability or not. However, this is not a trick; it's a practical way.

Last and not least is about the "doctor" titles. We agreed with that. In the future, people will have different levels of competency and different levels of skills to practise acupuncture with TCM. They need "doctor" titles and acupuncturists of different levels to indicate the ones practising at different levels. I think it assures the public of the training background, by indicating the

training background or level of competence of these practitioners. Of course, this is not eliminating anyone from upgrading their skills through different programs to a higher level. We hope that in the future everyone will be practising at the same level. This would be very effective and safe for treating Ontarians.

That's my presentation. Thank you.

The Chair: Thank you, Mr. Chen. We'll now move to the government side. You have about a minute and a half, Mr. Fonseca.

Mr. Fonseca: Thank you, Mr. Chen. When I visit one of the regulated health professionals, be it a physio or a chiro or a doctor—as I have seen many in my life—I feel a sense of safety and security, because I know that they uphold professional conduct. They do have quality assurance built into their colleges and their profession, and they are accountable to the public.

The same thing will happen with traditional Chinese medicine. I have access to acupuncture—actually, I didn't get it through a traditional Chinese medicine practitioner or a doctor; I received it through a physiotherapist—and got great relief; it helped me a great deal. So a regulated professional, a physiotherapist, was able to help me through acupuncture. This happens thousands of times, if not millions, every day in Ontario, and it's working very well.

With the regulation of traditional Chinese medicine and with practitioners and also with the doctor level, I look forward to being able to go to a traditional Chinese medicine doctor, knowing that they're going to have the highest level, and to experience that type of medicine to help me as I get older and as I need health care help.

Thank you very much for your presentation.

The Chair: We'll now offer it to the official opposition.

Mr. John O'Toole (Durham): Thank you very much for your presentation. I'm here today because I, too, am interested in choice in health care. I want to make that clear. But I'm also interested in, as you said, the issue of public safety. I hope these questions aren't rude, but they are fairly simple.

First of all, are you a doctor?

Dr. Chen: I am a PhD, so they should have called me "Doctor." I earned it in Canada.

Mr. O'Toole: You're a PhD?

Dr. Chen: Yes. In the first introduction, I said that I graduated from the University of Alberta with a PhD in genetics. So please call me "Doctor."

Mr. O'Toole: That's good. I appreciate that, because you didn't use the title.

Dr. Chen: They only called me today, so I didn't give them my bio and so on.

Mr. O'Toole: I'm quite impressed with the neutrality of your presentation, to be quite frank. I also was wondering about the issue around the grandfathering. I live in Durham. Some of my constituents might be, for instance, physiotherapists or chiropractors. Some of them believe in refreshing and an on-going lifetime of learning of medicine and health. A lot of them are taking some of

these courses in traditional or non-traditional approaches, some of which are acupuncture. My question is, is there any requirement for traditional Chinese medicine and acupuncture to go together? Expanding on that, can a physio or a chiropractor also practise, in their scope of practice, acupuncture with this bill?

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Dr. Chen: You have two questions; one is whether acupuncture and TCM should be together. We believe they should be together, because acupuncture treatment is based on what the bill calls assessment. Regardless of what it's called, understanding of a disease, the cause, and understanding how to relieve this disease is based on TCM knowledge, so acupuncture should not be separated from TCM.

The Chair: Thank you, Mr. O'Toole. Thank you, Dr. Chen. I'll now offer it to the third party.

Ms. Martel: Thank you very much for your presentation. I want to focus on your concern that we're going to end up having 23 different standards for practice. When I spoke in the debate on second reading, I read into the record some of the standards of practice of some of the colleges with respect to their members doing acupuncture.

The College of Chiropractors right now, for example, recommends that their members who want to practise acupuncture adopt the WHO guidelines, which is 200 hours. I thought that was quite interesting, that the College of Chiropractors already thinks that should be the standard for their members. Theirs was the most complete in terms of standards. I don't see why we can't get to a stage where we do have some minimum standard that is common to all of the regulated health professions, so that I, as a member of the public, know, when I go to get my acupuncture, that that person has a certain level of training, has passed certain tests etc. The College of Chiropractors is already recommending 200 hours. Do you see that there's a problem in establishing some kind of minimum standard across all the colleges?

Dr. Chen: Yes, I do. We don't oppose any other regulated health professionals practising acupuncture. Actually, we encourage them to gain more skills and knowledge, to serve Ontarians better. However, the key is, who sets the standards? It's not how many hours or what the minimum requirement is. It's one organization to set a standard rather than—

The Chair: Thank you, Ms. Martel, and thank you as well, Dr. Chen, for your presentation on behalf of the Traditional Chinese Medicine Physicians Association of Canada. We appreciate your deputation and your presence.

SHENLONG INTERNATIONAL GROUP

The Chair: I would now invite our next presenter, Zhilong Xu, chief executive officer of Shenlong International Group. Mr. Xu, please be seated. As you've seen, you have 10 minutes in which to make your presentation, beginning now.

Mr. Zhilong Xu: Thank you, everybody. My presentation will be short. I just want to make some comments and share some information. First, my comments: On behalf of Shenlong International Group, I would like to thank everybody for giving us this opportunity to fully support the Bill 50 regulations.

Second of all, I want to share some information with you. Our company went to needle-free acupuncture, to Health Recovery Chips. It's a patented composition of silicone stone, nanometre technology to treat and recover from extreme chronic pain and disease conditions. The benefit is acupuncture without needles. It's convenient. You can do your own. It's very simple, easy to learn, easy to use, and effective. It works better than needles.

Our company mission is to be healthy, to help yourself and to help others.

Maybe you want to know how this works. New research has found that nanometre silicone chips have many unique characteristics which produce optical-electronic magnesium, heat by electrical reaction. Our nanometre technology allows for a much greater surface of silicone to interact with body energy meridians at a more accurate level. The result is great, as Health Recovery Chips are able to influence and adjust the cells of the body's acupuncture points. This chain reaction of the cells effectively balances the functioning of internal organs through acupuncture channels and circulation meridians.

Our comments: I would like more health professions to practise acupuncture under certain standards to help more patients with more chronic diseases in Ontario.

The Chair: Thank you very much, Mr. Xu. You've left a great deal of time for us in our questions and comments, and we now move to the official opposition. You have about two and a half minutes or so, Mr. O'Toole.

Mr. O'Toole: Yes, just briefly. Thank you for your presentation. I apologize; I don't have a script here. Let me clarify: You're suggesting a new format for acupuncture?

Mr. Xu: Actually, no. This may not be related to regulation, but it's just a new invention.

Mr. O'Toole: A new invention?

Mr. Xu: A new invention that we wanted to share with you. It's needle-free acupuncture—doing acupuncture without needles. Maybe it will help your regulations if you have some information.

Mr. O'Toole: I just want to clarify that: It's a new form of acupuncture.

Mr. Xu: A new tool; new technology.

Mr. O'Toole: New technology.

Mr. Xu: Yes.

Mr. O'Toole: Like taking a drug without taking the drug.

Mr. Xu: Without drugs, without needles—just basically a silicone stone put on acupuncture points. We have the clinical trials as working better than needles. We welcome everybody to come to our office to try it.

Mr. O'Toole: Is it in practice today, and is it a licensed procedure today? Who regulates it?

Mr. Xu: My comments: I would like to fully support the regulations in Bill 50 because it better serves to protect consumers. Our company's new invention also matches its mission: safety and effectiveness.

Mr. O'Toole: Thank you very much.

The Chair: Ms. Martel.

Ms. Martel: You have this in practice now, or you are just testing this system?

Mr. Xu: I am in practice now, yes.

Ms. Martel: Right. And you have your own practice? I didn't get all of your background; I apologize.

Mr. Xu: I was an MD in China. My subject is acupuncture and herbal formulation.

Ms. Martel: You did that before, and then you came to Canada? Have you practised TCM here, or practised acupuncture here before you developed this?

Mr. Xu: Yes.

Ms. Martel: Okay. Following up from Mr. O'Toole's question, is this licensed, this technology?

Mr. Xu: This belongs to a class 1 improvement. It's licensed, yes.

Ms. Martel: All right. Thank you.

The Chair: We move to the government side. Mr. Leal.

Mr. Xu, you have one more deputation question, with Mr. Leal.

Mr. Jeff Leal (Peterborough): Mr. Xu, thanks for your presentation. Does the Shenlong International Group—are you distributing this technology in North America for use?

Mr. Xu: Yes. We have manufactured all this year, yes.

Mr. Leal: So this has been field-tested in Canada or in North America?

Mr. Xu: No. It has been tested in China.

Mr. Leal: Are there clinical results from these tests?

Mr. Xu: Yes. Clinical results: For certain ailments and conditions, this is better than needles.

Mr. Leal: Could you provide some background information on those clinical tests in China?

Mr. Xu: Yes. We have been testing over 2,000 patients for 90 ailments and conditions, mostly chronic disease conditions.

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Mr. Leal: If I could continue, Mr. Chair, we'll have the clerk follow that up. The list of conditions that people have experienced in China which they've used this technology to cure: Would that be available too?

Mr. Xu: Yes. The effects rated much higher than traditional needles, and it was not invasive.

The Chair: Procedurally, Mr. Leal, if you're asking legislative research to formally submit some material to you, then you are welcome to do so.

Mr. Leal: I've just made the request, Mr. Chair.

The Chair: Thank you. Accepted.

Thank you, Mr. Xu, for your deputation on behalf of Shenlong International Group.

MAI YEE YUE

The Chair: We'll move directly to our next presenter, Ms. Mai Yee Yue. Please come forward. As you've seen, you have 10 minutes in which to make your presentation. You begin now.

Ms. Mai Yee Yue: Good afternoon, everyone. I support the contents of Bill 50, but there are still recommendations and amendments that need to be considered from a student's point of view.

Implementing a controlled act for traditional Chinese medicine, TCM diagnosis, is one of the issues of concern. In order for someone to benefit from the effectiveness of a TCM treatment, a correct diagnosis and differentiation must be determined. An incorrect diagnosis will lead to serious body damage. The risk of harm from TCM diagnosis includes misdiagnosis and inappropriate treatment, harmful treatments based on a misdiagnosis, as there would be in conventional medicine.

From our perspective, to be certified, a TCM practitioner has a minimum of 4,000 hours of training. Only highly skilled and qualified professionals in the field should be privileged to conduct any form of TCM diagnosis and TCM treatment and practice. Making a TCM diagnosis requires someone who has the appropriate knowledge and understanding of TCM concepts.

TCM is expressed in terms of a metaphysical philosophy in which the central concepts are the presence of an energy called ch'i and the flow of that energy through the body along meridian pathways, which can be characterized by a harmony of two complementary, opposite aspects of the body called yin and yang in a healthy person and a deficiency or excess of ch'i in an ill person. Therefore, the cause of diseases is expressed as a disharmony. A diagnosis is made by looking at the body as a whole and the interrelationship of its parts.

There are similarities between a western diagnosis and a TCM diagnosis. In both, a conclusion is made based on observation interpreted through theory. That conclusion is communicated to the patient, and the patient can be expected to rely on it. However, as there are significant differences between western diagnosis and TCM diagnosis relating to causal explanation and theory, TCM diagnosis should be treated as a new and distinct controlled act.

Only individuals with appropriate qualifications and TCM training should be allowed to make a diagnosis, because a misdiagnosis will lead to inappropriate treatment, such as acupuncture at the wrong points or an herbal treatment that can cause damage when prescribed for a condition that has been mistakenly identified.

For example, in situations where a patient exhibits sinus problems, the colour of the nasal discharge and the colour of the tongue are very important indications for making the correct diagnosis. In diagnosing sinus problems, there is one type of pattern with white-colour nasal discharge and white tongue coating, which is totally different from another pattern with yellow nasal discharge and yellow tongue coating. Different herbal medicines and acupuncture treatment strategies are used for

the acute stage of sinus infection, for chronic sinus infections and the prevention of further infections. An individual with insufficient training in tongue diagnosis may incorrectly diagnose a patient with an acute sinus infection as having a chronic infection, and the result of this will be an incorrect acupuncture treatment or an incorrect herbal prescription, which will make the acute sinus infection much worse and persistent. This is one reason why TCM diagnosis should be carried out by highly skilled and trained TCM practitioners.

Another example demonstrating the importance of making a precise diagnosis is seen in the case where a patient diagnosed with kidney yin deficiency may have dizziness, memory loss or low back pain caused by heat from a severe illness. Generally, one should not use heat to treat any yin deficiencies because heat should not be treated with heat. An untrained herbalist or unqualified TCM practitioner may mistakenly prescribe a xi yang tonic, which would create more heat and cause more damage to the patient. The patient may suffer from more severe back pain. This is another reason why TCM diagnosis should be a controlled act, so that only qualified TCM practitioners have the right to make a diagnosis. This will protect the safety of the public from the harm that may result from a misdiagnosis.

The final example describes situations involving prolapsed organs. In the case of a prolapsed organ, the muscles and tissues that normally hold an organ in place have weakened and lost their structural integrity. In TCM, to help prevent prolapsed organs from occurring and also to prevent them from getting worse, we advise patients to avoid excessive overwork or other causes which can make the patient fatigued. The point of a combination of these factors in connection with a prolapsed organ becomes apparent when one is aware of and remembers that prolapses are generally considered to be due to a severe deficiency or weakness of ch'i and a subsequent inability of the ch'i to hold some tissues of the body up and in place. If an unskilled practitioner makes an incorrect diagnosis in a case like this, tremendous harm to the patient will occur, because the result of treatment will be weakening and drawing the direction of the ch'i downward even more. This would cause the organ to collapse, even heavy bleeding, and induced trauma to the patient. These risks can be avoided if TCM diagnosis is only carried out by highly skilled and trained TCM practitioners.

It can be noted that TCM diagnosis is the root of any treatment remedy. Without a proper diagnosis, the purpose of a treatment is defeated. In order to protect the public from the harms and risks of a defective TCM treatment which results from a misdiagnosis, only qualified TCM practitioners should be allowed to make a diagnosis. Evidently, a controlled act for TCM diagnosis is critical and should be implemented for the safety of the public.

Thank you.

The Chair: Thank you, Ms. Yue. We have a generous amount of time, a minute and a half per side, beginning with the third party.

Ms. Martel: Thank you for your presentation today. There have been some other presenters who have also talked about controlled acts. Right now in the legislation there aren't any controlled acts that are given to those who would get the "doctor" title. You've talked to us about communicating a TCM diagnosis. I appreciate that. Are there other controlled acts that you also believe doctors of TCM should be allowed to have access to?

Ms. Yue: I think for acupuncture and herbal medicine; I support that. I think there should be a controlled act for acupuncture and herbal medicine.

Ms. Martel: So one for acupuncture and, for example, prescribing, dispensing, selling or compounding a drug would be another controlled act that a doctor of TCM should have access to. Okay. Thank you.

The Chair: To the government side.

Mr. Fonseca: Ms. Yue, thank you for your presentation. I have to say I think you are our youngest presenter thus far, and it was great to hear you. I'd like to know a little bit more about, in terms of your study, what level you are at. Are you almost graduating? How do you feel, as the college of traditional Chinese medicine is formed and the profession is regulated, that will help your career, moving forward here in the province of Ontario, which I think is a great time for you? Can you tell me, in terms of the "doctor" title, what type of level you would be thinking that the college would be bringing forward, in terms of numbers of hours of theory and practice towards achieving that "doctor" title?

Ms. Yue: Right now, at the school where I'm studying, it's about 4,600 hours, somewhere around there. I think that's a sufficient amount of time. But there's always more training that could come about later on, just for experience.

Mr. Fonseca: That's for the "doctor" title, 4,600 hours?

Ms. Yue: Yes.

Mr. Fonseca: Are you working towards that?

Ms. Yue: Yes. I plan to. Right now, I'm in my second year.

Mr. Fonseca: Does this piece of legislation, Bill 50, give you a lot of hope?

Ms. Yue: Yes, it does. It's actually very exciting.

The Chair: Mr. Arnott.

Mr. Ted Arnott (Waterloo-Wellington): Thank you very much for your presentation. I think you devoted much of your time to talking about the importance of protection of the public. You communicated to us the importance of ensuring that a diagnosis is accurate and the problems that might result if there is an inaccurate diagnosis. Do you have any specific suggestions for this committee as to how the bill could be strengthened to ensure that those sorts of situations don't happen, ever? Or do you feel that the provisions of Bill 50 are sufficient to create the kind of regulatory regime that's necessary to protect the public?

1700

Ms. Yue: I would honestly have to say that I don't know all the details of the bill, just because I briefly

looked over it, so I don't remember exactly all the details of it. But I think just to have it—for people who take a course, maybe like a weekend course, and then they have that certificate to give out treatments, I don't think that's a solid enough background to even make a diagnosis. I know from my own experience studying in school, learning about the tongue, or even the pulse, maybe at the end of the four years I'm studying, I'm not sure how solid my background will be even then, just because you need that experience, that intensive training just to build up to that point where you can make a proper diagnosis.

The Chair: Thank you, Ms. Yue, for your presence and deputation.

RICHARD DONG

The Chair: I'd now invite our next presenter, and that is Mr. Richard Dong. Please come forward, Mr. Dong. As you've seen, you have 10 minutes in which to make your presentation, which I invite you to begin now.

Dr. Richard Dong: Thank you. Good evening, everyone. I am very pleased to speak here regarding regulating traditional Chinese medicine and acupuncture.

We have been working in Canada for eight years, offering our professional acupuncture and TCM treatments to various communities. To date, the government did not regulate traditional Chinese medicine. Most insurance benefit policies don't cover acupuncture treatment offered by a TCM doctor or an acupuncturist. There is an obligation to move forward with the regulation of traditional Chinese medicine and acupuncture. We, on behalf of the community and citizens, strongly support and request the government to regulate traditional Chinese medicine as soon as possible.

Regarding the "doctor" title: The highly qualified practitioners of TCM and acupuncturists deserve the right to call themselves doctors. They should get the "doctor" title. The TCM colleges and the Ministry of Health should make the standards as soon as possible. My personal opinion: a minimum 4,000 hours of training and five years in practice.

In the beginning of the regulating, we should be authorized to use the grandfather clause, and the TCM colleges should be authorized to use the Chinese language in the licensing examination.

Thank you very much.

The Chair: Thank you very much, Mr. Dong. We have a generous amount of time for questions, and we'll begin with the government side, about two and a half minutes each.

Mr. Fonseca: Mr. Dong, thank you very much for your presentation. I would just like you to elaborate. As we move forward with the college, what do you see as some of the steps in terms of bringing the voices of traditional Chinese medicine to the table?

Dr. Dong: Excuse me, please?

Mr. Fonseca: As we move forward with the college of traditional Chinese medicine, those who will help in the transition: What type of expertise do you see coming

forward as the college is established? What people, what stakeholders, what individuals?

Dr. Dong: I'm—

Mr. Fonseca: Who should help?

Dr. Dong: Pardon? Who can be the members of the committee?

Mr. Fonseca: Yes. As the college is formed, who should bring their expertise? What key leaders in traditional Chinese medicine do you know of here who would bring their expertise forward in setting up the college?

Dr. Dong: My idea is not mature enough.

Interjection.

Mr. Fonseca: Mary, do you want to—

Dr. Mary Xiumei Wu: I think the question was, what kind of people with expertise should be appointed to the council? If I may, Chair, to answer this question, my personal opinion is that we need to have—

The Chair: Please identify yourself once again.

Interjection.

Dr. Wu: Sorry.

Interjection.

Dr. Dong: The best practitioner, the leaders of community associations, and someone from the other regulated health professions.

The Chair: We'll open it now to the PC side.

Mr. O'Toole: Thank you, Dr. Dong. Are you a doctor? It says here that you're a doctor.

Dr. Dong: I was an MD in China. Here, I'm not because I'm not regulated. They didn't give me a title. They didn't give me a space.

Mr. O'Toole: I appreciate your written submission on that. It's very good.

Dr. Dong: Thank you.

Mr. O'Toole: Again, I want to be on the record clearly for patient choice, because this is important. My question to you is this: Would you prefer to be regulated under the College of Physicians and Surgeons and have specialists from traditional Chinese medicine and those specific specialties under the umbrella of one college? If we have a bunch of colleges, we're going to have some confusion about titles.

In today's society, an engineer and a technician have problems, although quite often they do similar services in the community. So you have different persons today expecting to get certain service, such as through traditional Chinese medicine, with acupuncture. In fact, there are really two types of acupuncture, one that is traditional and one that is anatomical. Traditional Chinese medicine is the one based on the five principles—Taoism, Buddhism. What should be regulated and who should regulate it? That's my question.

Dr. Wu: Would you clarify your question, please? I'm a little bit lost.

Mr. O'Toole: I did speak rather circuitously, though not deliberately.

Interjections.

Mr. O'Toole: I guess to simplify, should there be one college? The College of Physicians and Surgeons of Ontario has a branch under it dealing with other groups,

like TCM and acupuncture, and it calls in specialists who can regulate public safety. Mr. Fonseca might want to answer that question too, because he's next to the minister.

Dr. Dong: At the beginning of the regulation, many said that it was not there. But we have to take the best steps. It takes time, and it will slowly, slowly get better. If we don't regulate, if we don't take the first step, we won't take the second step. We won't have anything.

The Chair: I'd offer the floor now to the third party.
1710

Ms. Martel: Thank you for your presentation. Should those TCM practitioners with the "doctor" title have access to controlled acts? And which ones?

Dr. Dong: Who gets the "doctor" title and what kinds of rights can they have?

Ms. Martel: Right.

Dr. Dong: Good question. They can make a Chinese medicine diagnosis and use other kinds of practice, like tuina and qigong.

Ms. Martel: What about prescribing a drug, compounding a drug?

Dr. Dong: Chinese herbal drugs, of course.

Ms. Martel: So you would suggest to us that we should give doctors some controlled acts, right? In the legislation now, you get the "doctor" title and you don't get access to any controlled acts.

Dr. Dong: You mean, giving a prescription for herbs?

Ms. Martel: Yes.

Dr. Dong: Yes, of course. We have to have that.

Ms. Martel: So we need to make some changes, because with the legislation right now, even if you get the "doctor" title, you still can't make a TCM diagnosis. You still cannot prescribe herbs. I don't think this makes much sense.

Dr. Dong: It's for Chinese herbs. There's a difference.

Ms. Martel: Yes, I agree.

Dr. Dong: They are not drugs. There's a difference.

Ms. Martel: I understand that, and we should give you that right. If you're a doctor, we should give you the right to prescribe—

Dr. Dong: Actually, right now many people do it. Many Chinese medicine practitioners do it.

Ms. Martel: They probably shouldn't be, though.

The Chair: Thank you, Mr. Dong, for your deputation.

ZHAO CHENG

The Chair: I now invite our next presenter to come forward, Zhao Cheng. Mr. Cheng, please be seated and begin your deputation now.

Mr. Zhao Cheng: Good afternoon, Chair and honourable MPPs. On behalf of a majority of the members of the Canadian Society of Chinese Medicine and Acupuncture, I would like to take this opportunity to re-emphasize that we are in agreement with the regulation of TCM/acupuncture as an independent health care profession. Canadian Society of Chinese Medicine mem-

bers will always give their full support to this legislative movement governing TCM practices.

In addition, our association stands firm on the following three principles:

(1) Acupuncture is an imperative and inseparable part of traditional Chinese medicine. All who intend to practise acupuncture must go through a single standardized qualification process. The bill must clearly outline who is authorized to perform acupuncture and what qualification must be met in order to perform acupuncture. To provide a fair ground, there must be only one standardized set of criteria for anyone who intends to enter this profession or the initial intention in the effort to protect public safety will be in vain.

(2) In like manner of our predecessors in British Columbia, Singapore and Hong Kong, we too should follow a grandparenting principle. This principle ensures that all existing practitioners who have enough work experience and suitable educational background will be issued a licence. The bill should clearly state that grandparenting will be granted during the initial stage of the licensing process in order to ensure the rights of experienced, qualified practitioners.

(3) To respect the origin and history of traditional Chinese medicine, in the bill it should clearly state that licensing exams will be available in the Chinese language.

We sincerely hope this piece of legislation may become more and more well-rounded as it completes the legislative process in a smooth manner.

My name is Zhao Cheng, vice-president of the Canadian Society of Chinese Medicine and Acupuncture.

The Chair: Thank you, Mr. Cheng. We have a generous amount of time; about two minutes per side, beginning with the official opposition.

Mr. Arnott: Thank you very much for your presentation, sir. You have suggested that, as in jurisdictions like British Columbia, Singapore and Hong Kong, there should be a grandparenting principle. In other words, those who are currently practising would be grandfathered.

Mr. Cheng: Yes.

Mr. Arnott: Does that not, to some degree, contradict the whole fundamental basis for the legislation, which is that there is a need for regulation in traditional Chinese medicine? That's certainly the purpose of the bill.

Mr. Cheng: Yes. I would clearly support this principle. It's very important. A lot of acupuncturists are qualified practitioners. Now it's not clear. Maybe future regulation documents need to clarify that.

1720

The Chair: Ms. Martel.

Ms. Martel: Thank you for your presentation. I want to ask you about point number (1). You say that we need one standardized set of criteria or the intention to protect public safety will be in vain. Can you explain more why you feel that way?

Mr. Cheng: Yes. Actually, maybe regulation to protect public safety is possible, so Ontario needs regulation

of TCM and acupuncture. But professionals still need—it's clear that some people need some limited time to study acupuncture and Chinese medicine, say, 200 hours or 400 hours. I think it might be better after the TCM college is set up.

Ms. Martel: The college should set that up, should set that standard?

Mr. Cheng: Yes.

The Chair: To the government side.

Mr. Kular: Thank you for presenting. I'm a physician registered with the College of Physicians and Surgeons of Ontario. In a similar way, Bill 50 is going to set up a college which is going to set standards for traditional Chinese medicine as well as acupuncture. In our medicine, the western type of medicine, when we say, "prescribe drugs," we have authorization to prescribe antibiotics or blood thinners. In this bill, in sections 5, 14, 15 and 16, there are amendments which will help or permit the TCM practitioner to give some natural herbal products. What's your opinion on that?

Mr. Cheng: I think that the TCM practitioner needs to know how to use the natural products, because herbal medicine is actually natural herbs. The market has so many natural products that might be used for TCM or Chinese medicine. It's the same with tuina massage, tuina therapy, which is used by TCM practitioners. I think the future TCM college needs to make it clear what TCM can do. I believe the government can clear it up in the future.

The Chair: Thank you, Dr. Kular, and thank you as well, Mr. Cheng, for your deputation and your presence on behalf of the Canadian Society of Chinese Medicine and Acupuncture.

CANADIAN EXAMINING BOARD OF HEALTH CARE PRACTITIONERS

The Chair: I will now invite Mr. William Wine, spokesperson of the Canadian Examining Board of Health Care Practitioners.

Mr. Wine, as you've seen the protocol, there are 10 minutes in which to make your deputation. I invite you to be seated and begin now.

Mr. William Wine: My input here today is organized under three argument headings. The first heading is a forum for consultation with the community. It was highlighted on September 27 that inadequate community consultation was still an issue. Elizabeth Witmer, who is here today, did an admirable job of entering this issue into the record. The committee today is an excellent step in reconciling all these inputs and drafting a coherent bill that takes into account the input from all these parties. Apparently, some 3,500 people claimed that they had not been consulted, although the government claimed that they had.

Heading B: "Risk of Harm," otherwise known as protection of the public. As presently worded, the proposed legislation would open a floodgate of risk of harm, as it

allows practitioners who would be licensed under the proposed act, as it is presently drafted, to perform:

(a) the controlled act of diagnosis without having received adequate allopathic medical education to do so, as well as allowing them to perform the controlled act of prescribing, suggesting and dispensing medication without having adequate education in prescribing and allopathic medicine and toxicology to screen for adverse drug reactions. As well, there is the issue of adverse drug interaction effects between TCM medications and concurrent allopathic medications. This risk is considerable and includes possible death. The risk of harm under this heading is twofold: It would also include being denied access by a patient to the standard therapy as a result of being given an inadequate or inaccurate diagnosis and relying on this diagnosis to their detriment. This is a detrimental-reliance argument.

Item (b) under "Risk of Harm" is the controlled act of prescribing. The family of errors here is an error of commission. TCM remedies sometimes are illegible, unspecified, and the ingredients are not written in English. Technically, Health Canada should be regulating this, but I think it does come within the purview of this committee to address the risk of harm in terms of product labelling.

Secondly, when the drug being prescribed does in fact have a quantifiable and known active "ingredient"—i.e. it is not a placebo—the ingredients are often contraindicated with allopathic medications which they may be taking concurrently, or the medications may be adverse to their condition.

As drafted, the bill would allow TCM practitioners to perform the controlled act of prescribing, recommending, suggesting and dispensing medications without having adequate education in pharmacology, toxicology or allopathic medicine to be able to screen for or deal with either adverse drug reactions, known colloquially as ADR, or adverse drug interaction effects, known colloquially as ADI. Often, Chinese herbs are sold with no English or French indications or list of ingredients on them, and frequently the labelling is in Chinese. This is contrary to the Food and Drug Act.

Recently, a colleague of mine, Bruce Pomeranz, a leading acupuncture researcher at the U of T, published an article in JAMA, the Journal of the American Medical Association, citing deaths from ADR and ADI as the third-leading cause of death in North America, behind heart disease and cancer. This is a real and massive and quantifiable epidemiological risk that would be increased, not decreased, by the proposed legislation as it is presently drafted. I'm in favour of regulation, but I'm in favour of the correct regulation.

Item (c) under "Risk of Harm": controlled act of inserting a needle beneath the dermis. This is the current wording of the RHPA. The issue is dealt with admirably by the CPSO in its manual on guidelines for infectious disease control and has been adopted by the medical officers of health for both Ontario and Toronto. Shockingly, the number of acupuncturists who have been prosecuted or litigated for using recycled needles has actu-

ally gone up since the SARS epidemic and the bird flu epidemic warnings. There is no clear indication in its wording that the proposed legislation would adhere to the CPSO infectious disease control guidelines or include training in infectious disease, sterile procedure, or the basic pertinent sciences.

Of course—perhaps it goes without saying—the other risk of harm from inserting a needle comes from using the wrong needle and/or the wrong technique and/or the wrong point of insertion and/or insufficient training in emergency medicine to deal with a possible sequela of an acupuncture treatment—i.e. to revive a patient who is not breathing. Epidemiologically, there would appear to be an underreporting of adverse acupuncture sequelae, including death, in Ontario compared with the United States per 100,000 members of the population.

To cite one procedure, for example, there have been quite a few cases of severe sequelae, including death, from pneumothorax—that's a condition where the pleura are punctured and air enters—after treatment using needles at a point called REN 17, which is in the thorax. This has been reported in the US research and medical literature and in the press during the last five years.

There is no clear wording, for example, in the proposed legislation for mandatory reporting of adverse events—I'll repeat it: mandatory reporting of adverse events—or precautions or training to avoid them, written in the language of western scientific medicine.

1730

(d) under "Risk of Harm: Protection of the Public," and I give credit to the NDP health critic, who is also here today: A step in the right direction here would be to incorporate the WHO standards—I don't have them in my hand to wave, as you did, but you can wave them—as a minimal level of compliance in the regulation and to have this committee write the regulations and include the WHO standards as a minimum level of compliance in the regulations before it goes back to the House.

Heading C, Abrogation and Violation of Rights, including the rights of existing practitioners and regulators of TCM and acupuncture": Several groups apparently are preparing a charter challenge to the proposed legislation. However, the issue, succinctly, is the issue of grandfathering of the current cohort of practitioners. Not only do we have the issue of an absence of minimum levels of compliance, we have an absence of grandfathering wording in the regs.

Grandfathering of the current cohort of practitioners who have been practising for more than five years, have had more than 2,000 hours of practice with an adequate safety record, have been regulated by a current regulatory body and have adequate malpractice insurance should be an automatic process, not in contradiction to (d) of subheading B above. This is different from the minimum requirements for compliance to be admitted into the licensure, if the licensure should be admitted into law.

The grandfathering issue also applies to the current regulatory groups—I have no idea how many there actually are, but I think Elizabeth had an estimate—who

would also have issues as to their ability to continue to give people a title.

The two current naturopathic regulatory bodies also regulate acupuncturists by default. One is the Board of Directors of Drugless Therapy and the other is the American Naturopathic Medical Certification and Accreditation Board. Acupuncture and traditional Chinese medicine have been included in the scope of naturopathic education, practice and regulation for over 60 years. The grandfathering of all the current regulatory bodies who are not currently colleges in the—

The Chair: Mr. Wine, with regret, I have to inform you that your time is now expired. I would like to thank you for your presence and your deputation today.

ONTARIO PHYSIOTHERAPY ASSOCIATION

The Chair: I would now invite our next presenter, Mr. Douglas Freer, physiotherapist, of the Ontario Physiotherapy Association. Mr. Freer, I invite you to please step forward and be seated. As you've seen, you have 10 minutes in which to make your full deputation. Please begin now.

Mr. Douglas Freer: Good evening. Thank you for taking the time to allow me to present my views on Bill 50, the proposed legislation that would deal with licensing traditional Chinese medicine and acupuncture in the province of Ontario. I personally believe this is long overdue.

I am Douglas Freer. I am a registered physiotherapist in the province of Ontario. I own and work in a private practice in Barrie and Collingwood. I have practised for over 30 years. I live in beautiful Collingwood. I am representing the Ontario Physiotherapy Association as well as my own interests as a physiotherapist.

Our professional association has 4,500 of the 6,000 licensed physiotherapists in the province as its members. On behalf of the Ontario Physiotherapy Association, I want to welcome the profession of traditional Chinese medicine and acupuncture to the family of health care professionals who are governed pursuant to the Regulated Health Professions Act.

The OPA and its members look forward to working with these professions in providing enhanced access to quality health care and developing consistent standards of practice where our scopes of practice overlap. The OPA fully supports the restriction of acupuncture to those practitioners who have demonstrated competence to perform it safely and effectively. We also fully support the approach in Bill 50 whereby the new College of Traditional Chinese Medicine Practitioners and other colleges may restrict their members to perform acupuncture.

The OPA was very concerned about some previous proposals whereby members of the proposed TCM college would be given exclusivity in the performance of acupuncture. We think that would unnecessarily restrict access to a treatment modality that many Ontarians find

beneficial. I think it was under the past Conservative government that the paper was released that suggested acupuncture be considered a modality.

My comments to this committee with respect to Bill 50 will focus primarily on the provisions in the bill that relate to physiotherapists being able to continue using acupuncture as a modality in the many modalities that they and I use in our everyday practices. I graduated with an honours degree in physiotherapy in 1973 at UWO, secondary to a previous honours degree from the University of Guelph in 1970. My degree in physiotherapy gave me extensive training in academic and clinical Western medicine to allow me to assess and treat the musculoskeletal conditions that I see each day in my practice.

Today's graduating physiotherapists are graduating with a master's in physiotherapy, which is a minimum of six years of university. I took my first course in acupuncture in 1975, which introduced me to the TCM approach to body, mind and spirit and the concept of energy channels. Up to the early 1980s, I was not allowed to use needles below the dermis, but used my traditional acupuncture training by applying ultrasound or lasers on the acupuncture points to get the results that would help my clients. I still have to use the laser at times on clients who are needle phobic. This acupuncture is mainly based on TCM diagnoses information.

In the early 1980s, the Acupuncture Foundation of Canada, AFC, started to allow physiotherapists to take their courses. The AFC was a medical organization that had been teaching physicians acupuncture since 1974. The organization was developed by a number of physicians in Ontario. The backbone and brainchild of this organization was Dr. Joseph Wong, who presently practises in Toronto as a physical medicine specialist. Joe was in private practice in Sudbury at the hospital for many years running a pain clinic, in MPP Shelley Martel's region. Joe developed a concept of anatomical acupuncture. Joe had graduated in Hong Kong in 1954 with his degree in medicine and acupuncture. When he came to Ontario, he knew that Western medicine was not ready yet for talk on energy channels and other aspects of TCM, but he also knew that acupuncture was a very valuable tool in treating many of the problems that his patients were demonstrating. The story goes that he spent some time in the cadaver labs at U of T and discovered that many of the acupuncture points that he used were on nerves, blood vessels or trigger points in muscles. Over time, he developed the anatomical acupuncture which is taught today by AFCE. It is recognition of this that the Chinese government gave Joe an honorary doctor's degree a few years ago.

My training in anatomical acupuncture allowed me to use this modality based on my extensive knowledge of anatomy, physiology etc. that I gained in my physiotherapy schooling. This approach led me to the use of the modality of acupuncture based on Western medicine assessment and treatment procedures that I had been taught. I always remember Joe talking about acupuncture

as the best physical therapy tool for treating inflammation, and after 33 years of practice, I believe him.

I passed my written and oral practical examinations in 1991 from AFCI. I have been a teacher for AFCI since 1992 and an examiner since 2001. I am the current president of the Ontario chapter of AFCI—since 1999.

AFCI has taught thousands of physiotherapists this technique since the early 1980s in Canada and has been asked to teach in Australia and New Zealand. I, like many of my cohorts, continue to take training in acupuncture yearly from AFCI. AFCI has developed, under the leadership of Dr. Sona Tahan from Beirut, a number of courses for training of their members in TCM diagnoses. This came from Sona's training and teaching in China. The website can explain all this.

The second acupuncture tool that I and a number of other physiotherapists in Ontario use is IMS. Dr. Chan Gunn from Vancouver developed intramuscular stimulation acupuncture. Dr. Gunn developed this type of acupuncture after working with WCB in the 1970s. He now teaches a course in Canada and 18 other countries. It is in recognition of this work that he has received the Order of British Columbia and the Order of Canada. This program has entry criteria which include the AFCI level 1 examinations, and there are examinations that must be passed before practise. In British Columbia, presently there are approximately 88 Gunn IMS physiotherapy practitioners, 94 in Alberta and 19 in Ontario. I have listed BC and Alberta as these two provinces currently have acupuncture legislation. Physiotherapists in Alberta practise acupuncture under three lists: the Dr. Gunn-trained people, the AFCI certification or the Steven Aung course at the University of Alberta in Edmonton. I have clients driving five hours, from as far as Elliot Lake, to get this modality from me in Barrie. The only other therapist using this modality was in Hearst, and she retired. The iSTOP website explains his techniques.

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Therefore, I would like to state that I believe that physiotherapists, with their Western education, have the background and knowledge to use the modality of acupuncture very effectively and safely. The college of physiotherapy, in their information-gathering a year ago, found that 1,500 of their 6,000 members were using acupuncture on a regular basis in their practice.

The second issue I would like to discuss is the suggestion by the TCM practitioners that physiotherapists are a risk to the public. The college of physiotherapy licenses me as a physiotherapist to practise in Ontario. The college of PT is one of 23 colleges that were set up in 1991 to legislate the professional practice of medical acupuncture in Ontario. The legislation was to protect the public. The Drugless Practitioners Act, which preceded the college, allowed physiotherapists to use acupuncture within their scope of practice. That has continued to date. When I spoke to the college registrar, Jan Robinson, last week, she informed me that since 1993 there have been less than five complaints against physiotherapists in their use of acupuncture. None of

these complaints went to discipline. I understand that most of the issues were regarding practice management and billing and not treatment.

The college of physiotherapy has a number of areas that one can be investigated under. These include standards of practice, professional conduct, practice management and billing, and sexual-abuse boundaries. In my use of acupuncture as a modality, I could be investigated under any of these categories. Included in this is a policy on infection control. Our college, I believe, has put in place many quality assurance measures and continues to add new measures into their program to make sure that I have and continue to maintain a level of competence in my practice of physiotherapy. Their on-site assessments are an added new tool to help assess a physiotherapist's level of competency. This type of quality assurance has applied to and continues to apply to all aspects of me and other physiotherapists who practise in the province of Ontario.

OPA has some concerns; one is regarding title and the protection of title, but I want to leave those at this time. We're producing a paper for Friday.

In closing, I believe: (1) acupuncture is a safe and extremely effective technique when practised as an adjunct by trained medical professionals who treat acute and chronic inflammation in the human body; (2) the university training of a physiotherapist is rigorous in both clinical and research skills and is based on evidence-based practice. The curriculum contains necessary background and biomedical knowledge with particular emphasis on adding the physiology necessary for training in acupuncture.

The World Health Organization, WHO, in its 1996 document recommends 200 hours of formal training in acupuncture for medical doctors when used as an adjunct. I did not find any specific hour recommendations for physiotherapists, who are "better trained in musculoskeletal dysfunction evaluation and treatment than most physicians." The AFCI training available exceeds this recommendation, with 300 hours of formal training for physiotherapists. Gunn also has equivalent hours.

I know that if I was not allowed to use the acupuncture tool in my practice daily in Ontario, I would have to leave this province.

The Chair: Thank you, Mr. Freer. I regret to inform you that the time has now expired, but I thank you for your presence and deputation on behalf of the Ontario Physiotherapy Association.

CHINESE MEDICINE AND ACUPUNCTURE INSTITUTE OF CANADA AND CHINA

The Chair: I invite our next presenter to please come forward, and that is Simon Leung, president of the Chinese Medicine Institute of Canada and China. Mr. Leung, as you've seen, you have 10 minutes in which to make your deputation. I invite you to begin now.

Dr. Simon Leung: Hi, ladies and gentlemen. Good afternoon. Today I am in support of Bill 50.

The regulation of the Chinese medicine and acupuncture profession has a lot of benefits, listed as follows.

First of all, the social aspect: The regulation of the profession can provide safety to the general public. With regulation, only those qualified persons can perform acupuncture and/or prescribe Chinese medicine to persons in need of the service. At present, any person can prescribe Chinese medicine or perform acupuncture. Under such situations, the general public is at great risk of wasting time, money and even endangering life.

The economic aspect: The regulation of the profession can help the government to save money too, since right now the waiting time to see a doctor or specialist, even in emergency, is very long. The government has to spend great amounts of money in improving the situation.

The regulation of the profession provides a very good alternative for the general public. It can solve part of this problem of long waits. As a matter of fact, Chinese medicine and acupuncture are a very good alternative treatment for many illnesses and chronic disease. Regulation can bring along money savings in all these areas.

In addition, more people will be attracted to this profession under training or doing related business, thus more employment can be created.

Professionally speaking, the regulation can bring forward high standards of TCM professions in the areas of training, research and development, facilities, quality, promotion, as well as international conferences and seminars. These are in fact very beneficial to all Canadians.

Medically speaking, regulation of the profession can bring forward positive co-operation as well as adoption of those western and Oriental medicines to heal sickness. This provides an even better health care system to all Canadians.

However, no legislation is perfect. It requires changes and also amendments according to the changing needs of society; so does the regulation of the Chinese medicine and acupuncture profession at this early stage. To solve the problem, I think the government should form a TCM college for the profession and designate authority and power to this college so that related bylaws and guidelines can be set up for the profession—at present or in the future, whenever it is necessary.

To conclude, on behalf of the Chinese Medicine and Acupuncture Association of Canada and China, I fervently support the regulation of the profession and sincerely express my deepest gratitude to the Ontario government, all Parliament members and the general public to have the bill passed. Thank you very much.

The Chair: Thank you, Mr. Leung. We'll begin with the NDP.

Ms. Martel: Thank you for your presentation. I would assume that you support what's in the current bill, which is that the college, through regulation, will set up the standards to be a doctor. Flowing from that, my question is, if you get the title of doctor, should you also have access to some of the controlled acts that other doctors have? Do you have a view on that, one way or the other?

Dr. Leung: I think the most important thing is that, as doctors, we have to prescribe something to our patients, yet we can't prescribe the Chinese medicine. It's no use at all. Then we can use our judgment. For TCM, we have our own way of diagnosis. We also appreciate co-operation with other doctors—family doctors or specialists. We know they have really good diagnoses, especially X-ray, ultrasound or others. We can co-operate together and use acupuncture or Chinese medicine. A lot of very tough sicknesses—for example lupus, MS or even endometriosis etc.—can have really good improvements. The Chinese medicine doctors can do something according to their profession.

Ms. Martel: So they should be given some access to either prescribing herbal medicines, communicating a TCM diagnosis, just to name two.

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Dr. Leung: Yes. And they also have professional knowledge. For example, a patient may really feel pain with arthritis or some sort of gas pain inside the stomach or intestines. They need some rest—

The Chair: Thank you, Ms. Martel, for that questioning. I invite now Mr. Ramal.

Mr. Leung, please be seated. We still have two more parties.

Mr. Ramal: Thank you for your presentation. I was listening to you when you were speaking so I know that you think this bill is a perfect bill and it doesn't need any change unless there is some kind of change in society. So what would you say to the people who presented before you? You probably heard them. They were saying this bill isn't enough, that it doesn't include all the professions in that area.

Dr. Leung: In my presentation I said that no legislation is perfect. That means I'm looking forward to having a very good TCM college. For example, with most of the issues we are discussing here today they can do okay. They can be discussed, they can be upgraded, amended etc. in this TCM college because they, by law and also guidelines, can be set up according to needs. The legislation right now, the way the regulation is set up, I don't think is suitable for 50 years later. They need changes every time. So I'm saying, why not? Okay, the principle has to be passed. Let it carry on and then have a very good TCM college to do the rest of the job, to improve and improve so that this profession will be aiming at perfection.

Mr. Ramal: So your recommendation is that this bill is a very good step, a positive step, toward right directions. And in the future, if we need some changes, we'll do so according to the change in society. Is this what you mean?

Dr. Leung: Yes.

The Chair: Mrs. Witmer.

Mrs. Witmer: Thank you very much for your presentation.

The Chair: Thank you, Mrs. Witmer. Thank you, Dr. Leung, for your deputation on behalf of the Chinese Medicine Institute of Canada and China.

AI ZHEN TATELMAN
PAK CHEONG CHOO
LAWRENCE HYSCHUK

The Chair: I would now invite our final presenters of the day, Ai Zhen Tatelman, Pak Cheong Choo and Lawrence Hyschuk. Please be seated. Once you're ready, we will begin. I invite you to begin your 10 minutes now, if you might just identify yourselves individually.

Ms. Ai Zhen Tatelman: I'm Ai Zhen Tatelman. I'm going to take four minutes of your time. Let me first go on record to say that we are in favour of regulation. Nobody is disputing that. However, we would like to make sure that we and this government take the time, the effort and the energy to make sure that this regulation goes through with all the right details.

I'm very grateful that the government of Ontario has seen fit to hold public consultation on Bill 50. This is especially important since the Minister of Health was apparently too busy or too forgetful to respond to the many faxes we have sent him by practitioners of TCM. If indeed the latter is the case, I'm sure that many qualified TCM practitioners here can give him the right treatment. On this score, I'd like to refer to the Hansard record of the second reading of Bill 50. The MPP representing Parkdale-High Park asked the Minister of Health why, in the drafting of Bill 50, he consulted with only some and not all of his constituents. I just want to go on record to emphasize that it is not for want of trying on our part.

In the interests of time, though, I ask you to refer to the last two pages of my handout. I'm only going to focus on one of the main amendments we are asking for for Bill 50. That amendment is that section 18 of Bill 50 should be excluded or, at the very least, significantly revised. My understanding is that this bill, Bill 50, is called the Traditional Chinese Medicine Act and that we should regulate the profession of TCM, which includes acupuncture, based on TCM. So am I correct to assume that TCM acupuncture is strictly under the domain of this new college and that it will set the professional standard for anyone wanting to practise acupuncture, treating a broad range of conditions from pain to many internal conditions, as a medical practice based on TCM?

Section 18 will allow all 23 regulated health professions, plus naturopaths, plus those who work in addiction facilities, to practise acupuncture. But am I correct to assume that they cannot practise acupuncture if it is based on TCM? Can they then only treat pain? Can they then only practise a type of acupuncture that is not based on TCM at all?

We have five recommendations for this government to take note of. We would like to see regulation, but we would like to see that it establishes one standard for all practitioners for this one profession, and that this new college of TCM, and no other colleges or regulatory bodies, determine that minimum standard.

In answer to, "What about those people practising now who are not actually doing acupuncture based on TCM," other health care practitioners who wish to do TCM

acupuncture can always go for dual registration or get associate membership. In fact, the College of Chiropractors of Ontario already has this provision in place, and the HPRAC has likewise recommended that the college of naturopaths do the same.

We would like to point out too that a procedure of inserting needles below the dermis that is not based on the theories and principles practised according to TCM should therefore be renamed for what it truly is. Call it intramuscular stimulation, call it anatomical needling, or any other kind of nomenclature that clearly distinguishes it from TCM-based acupuncture.

As Chinese herbs are an integral part of TCM, TCM practitioners must be authorized to prescribe, dispense, sell or compound those herbs, and no other health professions should be authorized to do that.

I now pass the mike to the other speakers.

Mr. Pak Cheong Choo: Honourable members, my name is P.C. Choo. I'm here to speak as a consumer of alternative health care; in particular, acupuncture. As a consumer, I want to thank the province for moving forward to regulate the alternative health care industry.

Health Minister George Smitherman has said that traditional Chinese medicine must be delivered by practitioners with a high level of competence. It is precisely for that reason that I cannot support Bill 50, because it would permit a variety of health care professionals such as pharmacists, radiologists, chiropractors, speech pathologists, physiotherapists and others who have no training in performing invasive procedures and no education or training in the diagnosis and treatment of pain to be allowed, by law, to practise acupuncture with their own individual styles and standards. This is unacceptable because their scopes of practice do not warrant the inclusion of acupuncture as part of their practice. As I wrote in a letter to the editor of Vitality magazine, "Bill 50 allows anyone to stick needles into another person." But folks, to me, that is voodoo, not acupuncture.

If Bill 50 passes, it would effectively allow 26 different standards of education and training for the practice of acupuncture in Ontario. No other jurisdiction in the world has regulated acupuncture in that way. Why is Ontario choosing this option, at the expense of public safety, quality care and effectiveness? Acupuncture is recognized and regulated as a health profession in Quebec, Alberta and British Columbia, as well as 48 states in the US, in Europe, Australia and, of course, China. Unfortunately, if Bill 50 passes, acupuncture in Ontario will not have equal status with the rest of the world. As a consumer of alternative health care in general and acupuncture in particular, I am deeply concerned that the standard of care that I will receive in Ontario will not be on par with other jurisdictions in Canada and around the world. I therefore call on the minister to amend Bill 50 to take into consideration the many objections and criticisms and make acupuncture a true health care profession in Ontario.

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Mr. Lawrence Hyschuk: My name is Lawrence Hyschuk, and I'm also a consumer of alternative health

care for many years, acupuncture in particular. I am also a massage therapist by profession for 26 years. I have quite a lot of familiarity with acupuncture, both in terms of the theory and the understanding of what it is, and traditional Chinese medicine in general.

I want to raise a fundamental philosophical point: Traditional Chinese medicine is something which, really and truly, very few people here in the West know very much about at all. The attempt to regulate it has to deal with this basic fact: We really don't know what it is we're regulating. I would like to offer a suggestion that might be helpful in terms of understanding it.

I would suggest that traditional Chinese medicine is really like a foreign language: To those who have no familiarity with it, it's gibberish. It makes no sense. It raises all sorts of feelings of weirdness and notions that it's got to be something bogus or whatever because it's so foreign. To those for whom it's a native, understood thing, of course, there's a whole range of abilities and skills.

Not all traditional Chinese practitioners trained in China are equally skilled or equally knowledgeable, by any means. Those who learn it as foreigners, so to speak, inevitably have much less understanding of what it's really about. Like a foreign language, you can learn a few words. You can learn to ask for a cup of coffee or you can ask where the bathroom is and so on, but it doesn't begin to really fulfill the possibilities of what—this art of traditional Chinese medicine is probably the most extensively practised medicinal or healing art in the world, ever. I think maybe it's good to keep that in mind.

This is a huge, huge thing. It needs to be done in a way which gives the people who know the most about it, who have the most experience, the right and the responsibility to practise, to educate, to set standards. In other words, my concern is about the dilution of this system. If you learn a little bit about it, you might ask for coffee and wind up getting something else, to use the analogy of a language. A little bit of knowledge can be a dangerous thing. It's a very, very difficult thing to do well, to do it with safety. To do it with a basic understanding of what the principles of traditional Chinese medicine are is not an easy thing at all.

Yes, it's possible to use it to cure a cold or to deal with some pain. Those are minor uses or applications of traditional Chinese medicine. If those who want to practise in that style can be trained to do it safely, that's fine, but my fear would be that the whole system becomes diluted and that the people who wind up training at those lower levels may not be competent at all and may wind up passing on techniques and ideas which are really not sound.

This is a very, very complex and difficult thing, so the power to use it must be in the hands of people who have proven their understanding and who are the best that we have. That's my message.

The Chair: Thank you, Mr. Hyschuk, Mr. Choo and Ms. Tatelman for your deputation and your presence today.

If there's no further committee business, we stand adjourned till 10 a.m. in this room tomorrow morning.

The committee adjourned at 1805.

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Official Report of Debates (Hansard)

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Mardi 31 octobre 2006

Standing committee on social policy

Traditional Chinese
Medicine Act, 2006

Comité permanent de la politique sociale

Loi de 2006 sur les praticiennes
et praticiens en médecine
traditionnelle chinoise



Chair: Shafiq Qaadri
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 31 October 2006

Mardi 31 octobre 2006

*The committee met at 1001 in committee room 1.*TRADITIONAL CHINESE
MEDICINE ACT, 2006LOI DE 2006 SUR LES PRATICIENNES
ET PRATICIENS EN MÉDECINE
TRADITIONNELLE CHINOISE

Consideration of Bill 50, An Act respecting the regulation of the profession of traditional Chinese medicine, and making complementary amendments to certain Acts/ Projet de loi 50, Loi concernant la réglementation de la profession de praticienne ou de praticien en médecine traditionnelle chinoise et apportant des modifications complémentaires à certaines lois.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, welcome to the Legislature. As you know, this is the standing committee on social policy. We're here to consider Bill 50, An Act respecting the regulation of the profession of traditional Chinese medicine, and making complementary amendments to certain Acts.

If there is no business before the committee, I would invite our first speaker.

Ms. Shelley Martel (Nickel Belt): Very briefly, on a point of order, Mr. Chair: I would like to request some additional information from research, please. I'd like to know, and I should know this and I don't, so I apologize, what regulated health professions have access to the controlled act of procedures on tissue below the dermis, and, for those who don't, what is the process their college has to follow in order to try to get that as a controlled act for their members.

One final one, just because it's still not clear to me, around section 18: If you could check with the legal staff for the ministry and ask them again what regulated health professions have acupuncture within the scope of practice of their profession, and where you find that information.

The Chair: Thank you, Ms. Martel. Your requests are being processed as we speak by legislative research.

ONTARIO ACUPUNCTURE
EXAMINATION COMMITTEE

The Chair: I now invite our first presenter of the day, Jia Li, the director of the Ontario Acupuncture Examination Committee. Mr. Li, please be seated, and identify

yourselves, if you might, for the purposes of the permanent record of Hansard. I remind you that you will have 10 minutes in which to make your presentation, and if there is any time remaining within those 10 minutes, that will be distributed evenly amongst the parties for questions and comments. Please begin now.

Dr. Jia Li: Good morning, ladies and gentlemen, honourable members of the provincial Parliament. My name is Dr. Li, the president of the Ontario Acupuncture Examination Committee. Stanley is sitting next to me.

Mr. Stanley Gwo-Wuu Shyu: I am a certified acupuncture doctor—TCM doctor.

Dr. Li: He will join me in the presentation.

Today I have the privilege here to present our thoughts and our comments on Bill 50. In our belief, Bill 50 is fundamentally flawed. As you will see from what we have put on the top of our presentation, we call Bill 50 the "Traditional Chinese medicine discrimination act." In Bill 50, all traditional Chinese medicine practitioners, mainly Chinese, are subject to stringent licensing and regulation procedures before entering the practice, while existing health care professionals—mainly white-collar Caucasians—will be privileged to practise acupuncture with virtually no training, or weekend crash courses.

I took a look at the agenda today. Quite a few colleges are right behind me going to speak, and our guess is these people all come here to try to get the privilege to do so.

Despite the painful anti-Chinese history such as the head tax and the Chinese Exclusion Act in Canada, Chinese are no longer second-class citizens in this province. The government of Ontario has no excuse to disrespect Chinese culture and to discriminate against traditional Chinese medicine and acupuncture as a second-class health care profession.

Ironically, a government-written statement said, "Among the objectives of regulating a health profession is to ensure that [consumers] have access to safe, quality services provided by health professionals of their choice and to ensure public protection from unqualified, incompetent persons."

Upon the same belief or the same principle, the majority of TCM and acupuncture practitioners will always support one minimum standard for everyone who intends to practise acupuncture in Ontario. The minimum competency for the safe and effective practice of acupuncture must be established and enforced exclusively by the proposed college of TCM and acupuncture practitioners of this province.

I'm not going to read through the whole presentation, because you only allow me 10 minutes. All I said is, delete section 18 to make sure the practice of acupuncture refers to the controlled act of performing a procedure below the dermis. We request eight controlled acts, including communicating a diagnosis, because in Bill 50, you allow us zero.

I'm ready to answer any questions the honourable members have.

The Chair: Thank you, Dr. Li. We have quite a few minutes left over for questions, about two minutes or so each. We'll begin with the PC side.

Mrs. Elizabeth Witmer (Kitchener-Waterloo): Thank you very much, Dr. Li. You are indicating here that there needs to be one minimum standard for everybody, regardless of whether they're a member of your college or whether they would be a member of the college of chiropractors or physiotherapists. That's what you're saying?

Dr. Li: That's correct.

Mrs. Witmer: So you're saying they would have to go through the same educational process, the same hours, that everything would be identical?

Dr. Li: If anybody wants to practise medicine, they have to go through the college of physicians. They will be evaluated. If they qualify, they may challenge the exam. Then, if they get a licence, they can practise medicine. They cannot say, "I want to practise junk medicine and just take a weekend course." Why should the same standard not apply to acupuncture?

Mrs. Witmer: In number 3, you're saying that only a doctor of TCM, a TCM practitioner or an acupuncturist may insert acupuncture needles under the skin.

Dr. Li: For the purpose of acupuncture.

Mrs. Witmer: That's right. So if the standard is going to be set by the college of TCM and acupuncture, and if everybody had to go through it, then wouldn't everybody be able to do that? You're saying no. There's a bit of a contradiction, I guess, there.

Dr. Li: We're saying a minimum standard should be established. I think it is precedented. Any college, any health care profession, must establish a minimum standard, and whoever wants to practise, if the person is qualified, they are welcome on board. If not, they have to take further training.

Mrs. Witmer: All right. And I see that you're very concerned about the fact that there is no authorization of any controlled acts.

Dr. Li: We have absolutely none. It has been requested and at this time we have no idea why Bill 50 allows us to have nothing.

Mrs. Witmer: Have you had discussions with the government at all on this?

Dr. Li: Yes, but we are getting very little answer from that.

The Chair: Thank you, Mrs. Witmer. I'll offer the floor now to Ms. Martel of the NDP.

Ms. Martel: Thank you for your presentation this morning. Let me follow up from where Mrs. Witmer was

with respect to minimum standards. You said you feel there should be a minimum standard for those who wish to practise. I am assuming—and I'm not trying to put words into your mouth—you are meaning members of other regulated health professions?

Dr. Li: Correct.

Ms. Martel: So a standard there, and there can be a debate about what that minimum is, in terms of qualification. But the college itself is going to have professionals who will have a title of "acupuncturist." There is a distinction to be made there, isn't there? If you have a title of "acupuncturist," there must be a different standard that would have to be applied by the college for you to obtain that title.

Dr. Li: My understanding is, looking at the other acts—for example, the Chiropractic Act or the Physiotherapy Act under the RHPA in 1991—they clearly indicate the qualification of the titles. If a person is not licensed by the college of chiropractors or physiotherapists, you cannot use the title of "chiropractor." You cannot practise the specialty of chiropractic anything. You cannot call yourself a physiotherapist and you cannot use physiotherapy at all. You cannot say, "My name is Jia Li. I'm not a physiotherapist but I'm performing physiotherapy." If I do so, I will be prosecuted under provincial law, so the same thing should apply to acupuncture.

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Ms. Martel: What if you have two different definitions? What if you have a definition in the legislation that talks about acupuncture from a TCM perspective and a definition of acupuncture that would make more of a reference to "adjunct?"

Dr. Li: Well, in my opinion, there's only one acupuncture. There's no acupuncture beyond the text of traditional Chinese medicine. There are other people calling it intramuscular stimulation or whatever form of stimulation they want to call it, but acupuncture is acupuncture. Look at other jurisdictions in North America: British Columbia, Quebec, Alberta and the United States. All the jurisdictions recognize that acupuncture is a health care profession.

The Chair: With respect, Dr. Li, I will offer it now to the government side.

Mr. Richard Patten (Ottawa Centre): Welcome this morning, Mr. Li. I appreciate the concern you have. The only distinction I would make, and it builds a little bit on what Ms. Martel was talking about and Mrs. Witmer as well, is, do you agree with the distinction between acupuncture as a medical procedure, with a fully trained acupuncturist, and someone who uses it as an addition to another profession? As you know, right now, anybody can do it, so we're not talking about that. We're talking about trying to control this and trying to provide some standards and to make some sense out of this area. My point is, would you grant that distinction between a regulated profession using this as part of a treatment modality and not as a total procedure in and of itself?

Dr. Li: I disagree, because the government of Ontario doesn't recognize acupuncture as a health care profession

in Bill 50 at this time. As I said, when you look at other jurisdictions in Canada and the United States, most of the jurisdictions clearly indicate acupuncture and recognize it as a health profession. It's not a single modality. This is the biggest concern we have. If a medical doctor has got to use needles, that's obviously not our business. But when we're talking about acupuncture, it's not just a needle pricking skin. Acupuncture is a health profession. There must be a single standard, and the public must be protected.

Mr. Shyu: Can I also answer this question? Since I am a certified acupuncture doctor, before we insert needles, every treatment needs a diagnosis through a reading of the condition. In other words, we diagnose through a mirroring of the condition. We cannot insert needles—

The Chair: With respect, gentlemen, the time has now expired. Thank you very much for your presence and deputation, Dr. Li and colleague.

TORONTO INTERNATIONAL INSTITUTE
OF TRADITIONAL CHINESE MEDICINE
AND ACUPUNCTURE

The Chair: I'd now invite our next presenters, Mr. Bill Lo and Arthur Lo, principal and vice-principal of the Toronto International Institute of Traditional Chinese Medicine and Acupuncture. They're most welcome to come forward. Please be seated, and please identify yourself for the purposes of our recording. You have 10 minutes in which to make your presentation. I invite you to begin.

Mr. Arthur Lo: Ladies and gentlemen, I represent the Toronto International Institute of Traditional Chinese Medicine and Acupuncture. My name is Arthur Lo. My principal is coming, but he's parking, unfortunately, so I will present first.

We have been running the school here since 1999, so today I will put the focus on education. First of all, we are happy about, and also welcome, the regulation of TCM in Toronto. This is very great news, and it's also a great thing for TCM practitioners. But from the education angle, I think we'll put forward some recommendations on certain aspects.

The first one is on acupuncture. I think acupuncture has already been recognized worldwide for a long time. But because we are teachers who also run a school, we emphasize that, in the future, an education in acupuncture cannot be separated from TCM theory. This is the foundation, because acupuncture is not a hand skill. Some techniques are based on theories surrounding those treatments for the patient. These are important also and we emphasize it as a focus on future education.

The second aspect, a great aspect, is practice and future education in Ontario. This I can summarize in four points. The first one is that TCM is an ongoing service. Even though you haven't regulated it until now, the practice and services have already been running for over 100 years here, bringing things from the Chinese, the

Japanese. So the ongoing service was already here and our schools were already here. In the future, I think the TCM education board is supposed to accept or recognize the practice and training of the local schools. They've already provided over 10 years, 20 years here. All those things should be considered a contribution to TCM education and therefore to the Ontario people, because education is not only for now. In the future, the TCM doctor or practitioner will not be imported; they will grow up and develop here through our TCM education board. So the quality and maybe the development should be protected by our own education board.

Also, professionalism: TCM practitioners and acupuncturists already have a long history of practising here, but they have no regulation. Also, they have various conditions or practices. This is not a good thing for consumers. This is not a good thing even for the TCM practitioner, because we have no professionalism. So at this time, under the regulations, we also recommend, from the education angle, to put more effort in standardization, or maybe to put an education standard for the quality TCM in here.

Finally, TCM is not only for now, not only for the past, but also for the future. The next generation will be our future TCM doctors and practitioners, so education, I believe, is a must. This is not absent in Ontario: There are so many schools running similar TCM or acupuncture courses here. Of course, there may be various theories and different backgrounds, so under the new regulation scheme, we emphasize again that you take this opportunity to modernize and also to standardize all those practices. But please, co-operate, and maybe discuss with the societies and also with the local schools. Get some common objectives from all those backgrounds and form a Canadian TCM standard. That is our opinion.

The Chair: Thank you, Mr. Lo. We'll have a minute and a half or so per side, beginning with Ms. Martel of the NDP.

Ms. Martel: Thank you for your participation today. I'm just going through the brief, and it says that you would like to see local physicians and other health care professionals, such as chiropractors, physiotherapists and massage therapists, performing acupuncture. I agree with that, because there aren't TCM practitioners in my part of the world. These are the folks who are providing acupuncture, and I don't want to see that access cut off. There was some debate yesterday about whether there should be a minimum standard if you do that. That's what I've argued: There should be a minimum standard. During the course of my debate on second reading, I put out the possibility of the World Health Organization guidelines, which apply to—it says to doctors.

Mr. Lo: Agreed.

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Ms. Martel: Okay. So what do you think about that in terms of training for those who are not TCM practitioners but those whom I want to see continue to practise because they provide access in my part of the world and many others?

Mr. Lo: I think we can learn something from Hong Kong or even from China. Of course they may not be the same as Toronto, because we are a different country, a different culture. But TCM medicines come from Asia. I think what is most important, if possible, is to work with the local schools and some colleges and also some practitioners. Find out the common objectives. The best thing is to work with—

The Chair: Thank you, Mr. Lo. With respect, I will have to offer the floor to the government side.

Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale): Thank you, Mr. Lo. You mentioned that some people suggest conducting a qualifying examination and you said you think this examination is more suitable in the future for qualifying those who came from elsewhere and want to practise. I wonder, can you clarify this for me? Are you saying that the people who would be trained in this country shouldn't have any exam, that only people who are coming from outside should have the exam?

Mr. Lo: Currently, our country has no education for TCM. I think you understand that this is the reality. So I can say that most, maybe 100%, of TCM practitioners are imported, immigrants. They come from Asia, of course from different backgrounds. They were training in China, in Hong Kong, in Singapore, some of those. But they have their own standards, and some of those standards are very high. Once again I emphasize that we regulate TCM practitioners very well to protect the consumer and also to protect the TCM practitioner. But we need to put more effort into making sure of an education syllabus or maybe the standards, because this is for the future, for the next generation. We are not relying on the existing TCM doctor for another century. This is impossible, because we have our own regulations; we have our own doctors in the future.

The Chair: Thank you, Dr. Kular and Mr. Lo. I'll now offer it to the PC side.

Mrs. Witmer: Thank you very much for your presentation today. I note in here that you are suggesting that acupuncture would become, in this legislation, one of the items that would be covered by OHIP. Is that right?

Mr. Lo: It's a dream in the future. I'm not thinking now; maybe in the next generation, something like that. For this to become part of our health system is a must. You could maybe say it is our goal, not our goal but maybe the dream of all Ontario people, all Canadian people, because they'd be part of the health system. One more point is that if we make TCM part of OHIP, some could maybe say, "Oh, this may be a burden." No. TCM is not just a treatment but is also a method—

Mrs. Witmer: It's a choice.

Mr. Lo: Yes, how to upgrade your body. You don't need to spend one more penny to take care of your body; you'd take care of it by yourself, by your diet. You'd deduct extra in the future.

The Chair: Thank you, Ms. Witmer. Mr. Lo, thank you for your presence and deputation on behalf of the Toronto International Institute of Traditional Chinese Medicine and Acupuncture.

COLLEGE OF PHYSIOTHERAPISTS OF ONTARIO

The Chair: I will now proceed directly to invite our next presenters, Ms. Jan Robinson, registrar, and Rod Hamilton, associate registrar, of the College of Physiotherapists of Ontario. Please be seated. As you've seen the protocol, you have 10 minutes in which to make your combined presentation. Mr. Hamilton, please begin.

Mr. Rod Hamilton: Thank you, Mr. Chair. My name is Rod Hamilton. I'm the associate registrar of policy at the College of Physiotherapists of Ontario.

The college supports Bill 50's goal of ensuring patient access to acupuncture services that are delivered by physiotherapists and other regulated health professionals, including TCM practitioners, when this bill passes. In particular, the college supports section 18, which will narrow the existing exemption of acupuncture from the RHPA's list of controlled acts.

Section 18 will increase public protection by clarifying that acupuncture can only be provided by regulated health professions when it is within their scope of practice and when it is practised according to the standard of practice of that profession. The RHPA's model of health regulation supports the use of regulated health professions' scope of practice statements to determine which professions are authorized to provide acupuncture. RHPA scope statements describe in general terms the conditions that health professionals treat and the ways they treat them. Scope of practice statements have never listed the actual treatments themselves.

Using scope of practice statements as general descriptors of areas of permitted practice was recommended by the Health Professions Legislative Review in its 1989 report, because scopes of practice that gave some professions an exclusive monopoly over services (1) limited evolution and innovation in the role of health professionals, and (2) restricted patients' access to choose their own health care providers. These conclusions remain as valid today as they were in 1989.

The HPLR's foresight in developing scope statements that describe professional activities rather than prescribe the services that professions offer has been demonstrated time and again. This model has permitted health professionals' services to evolve according to patients' needs and promotes flexibility and innovation in the range of services provided.

By using the general scope statements to authorize which professions can provide acupuncture services, section 18 promotes the spirit of flexibility and innovation in which the RHPA was conceived.

The college also supports compliance with professional standards of practice as the second criterion for determining whether a profession may provide acupuncture. For regulators, standards of practice are broad-based expectations applied to all practices and governing all treatments. An acupuncture standard is only one component of the standard of practice of the profession. For example, the college's current standards of practice

contain nine detailed standards, ranging from infection control to complementary and alternative therapies.

As with all other treatments performed by physiotherapists, acupuncture is governed by all these expectations as well as the professional misconduct and other regulations under the Physiotherapy Act. Professional services are also governed by unwritten standards of practice that are based on what is best for particular patients and clinical best practices. This broad framework of standards applying to section 18 mean that for regulated health professions to provide acupuncture, they must comply with all the standards of their respective professions, all of which are intended to promote public protection.

The college is developing a standard for acupuncture that will update its current professional expectations regarding acupuncture training and practice. It has been approved in principle and will be distributed for feedback in November. Compliance with this and other standards will permit qualified registrants to provide acupuncture service safely and efficaciously.

The expectations defined for education in the standard rest on the pre-existing knowledge base that physiotherapists must demonstrate to enter the profession. Physiotherapists practising in Ontario typically have an undergraduate degree in physical education or kinesiology and a second degree in physiotherapy that provides an additional 2,500 to 3,000 combined classroom education and clinical placement hours. Physiotherapists must have a deep understanding of human anatomy, physiology and biomechanics before they can even begin to consider additional qualification in acupuncture.

Since the RHPA requires colleges to set standards for professional qualification, the college supports Bill 50's recognition of colleges' role in setting qualification standards for acupuncture that recognize existing competencies.

In summary, the college would like to reiterate the following points:

We support Bill 50 as a model of acupuncture regulation that will enhance public protection by limiting the performance of acupuncture to qualified health professionals.

We support the use of the twin criteria of regulated health professions' scopes of practice and standards of practice to authorize the performance of acupuncture.

We support Bill 50's continued recognition of the colleges' commitment to public protection in the way they set and enforce standards of professional practice.

The Chair: Thank you, Mr. Hamilton. There's about a minute and a half per side, beginning with the government.

Mr. Kular: Thank you very much for your presentation. The question I have is that one of the previous presenters said that TCM treatment is through certain kinds of meridians and acupoints. I'm a physician myself. I know that even "physiotherapist" and "physician" do not mean that they are taught surface anatomy, how to mark points on different parts of the body. Do

you think the anatomy taught to a physiotherapist is different than TCM meridians and acupoints?

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Mr. Hamilton: The approach that many or most physiotherapists use when applying acupuncture is an anatomical one, and it's based on existing muscle and nerve stimulation points, much of which is learned in typical anatomy and physiology classes in Western medicine education. I'm afraid I don't know enough about TCM to actually comment on other aspects of it. I can only speak for physiotherapy education.

The Chair: Thank you, Dr. Kular. There are a few seconds left if anyone has a follow-up question.

Mr. Kular: I can ask you a follow-up. I am very proud of the physiotherapists who do acupuncture. I have gotten assistance from some of them, and they keep the safety of the patient foremost. I really want to commend all the physiotherapists who are doing acupuncture.

Mr. Hamilton: Thank you very much.

The Chair: Thank you, Dr. Kular. We'll offer it to the PC side.

Mrs. Witmer: Thank you very much for your presentation. Are physiotherapists allowed to bill OHIP for acupuncture?

Mr. Hamilton: There have been recent changes to the model, but yes, in certain defined circumstances, physiotherapists who have a certain type of licence for their clinics are entitled to bill OHIP for a defined group of patients.

Mrs. Witmer: Now, when you say a special kind of licence, what—

Mr. Hamilton: There are a number of facilities that are licensed to provide OHIP-funded physiotherapy. I can't remember the exact number; probably around 90 or 100 across the province.

Mrs. Witmer: Okay. And you say "defined patients."

Mr. Hamilton: Patients who are under the age of 18 or over the age of 65 and patients who are recently released from chronic care facilities.

Mrs. Witmer: Okay, so it's the same as applies for everything else.

You said you have a new standard that you're introducing.

Mr. Hamilton: We have a new standard in process, yes.

Mrs. Witmer: Can you tell us a little bit about—what are the changing expectations regarding the amount of training and practice that's necessary?

Mr. Hamilton: The college has defined a practice-hour amount that is based on the minimum requirement for the Acupuncture Foundation of Canada Institute's basic-level training. That's the entry-level requirement for people who would provide a basic level of acupuncture services.

Mrs. Witmer: The hours?

Mr. Hamilton: The current proposal is 90 hours, as defined in the AFCEI educational program.

Mrs. Witmer: And what was it before?

Mr. Hamilton: There were no specific hours given. It spoke to the requirement that it be a graduate of a recognized acupuncture program.

The Chair: Thank you, Ms. Witmer. Ms. Martel of the NDP.

Ms. Martel: Thank you for your presentation here today. I'm the one who's had the concerns about section 18, because as a consumer, if I try to look at the scopes of practice in the legislation, which I did, acupuncture was not listed. I couldn't tell what the key word was in the scope of practice that would tell me which regulated health profession has acupuncture within their scope of practice. You've talked about that very clearly. As a consumer, if I'm trying to decide which regulated health profession should be practising acupuncture, what do I need to be looking for in somebody's scope of practice?

Mr. Hamilton: My understanding is that it's the types of conditions that are treatable by acupuncture. There are different types of acupuncture that are amenable to different types of conditions. For example, physiotherapists don't treat smoking cessation, those kinds of things. We treat physical conditions that are amenable to that kind of acupuncture. The actual language? I'm afraid I would have to refer back to the HPLR itself and look at the way the scopes were drafted. But they were drafted in general terms to allow those types of modalities that were offered under those scopes to evolve and change as the patient needs evolved and changed. So I don't think there is a key word, no. I think it's the kinds of conditions and the requirement for colleges to assess what's appropriate within that general understanding of what the scope of practice is.

Ms. Martel: So the college makes the final determination about whether or not acupuncture is within their scope of practice.

Mr. Hamilton: I think ultimately the college and the Ministry of Health, in consultation, would determine whether or not it would be appropriate.

The Chair: Thank you, Ms. Martel, and thank you to you as well, Mr. Hamilton, for your presence and deputiation on behalf of the College of Physiotherapists of Ontario.

I would like to remind my colleagues and those listening that this is being broadcast by closed-circuit television. There's more seating in the room next door.

COLLEGE OF MASSAGE THERAPISTS OF ONTARIO

The Chair: I'd now invite our next presenter, and that's Deborah Worrad, the registrar of the College of Massage Therapists of Ontario. Ms. Worrad, if you've seen the protocol, you have 10 minutes in which to make your presentation. You're most welcome to begin now.

Ms. Deborah Worrad: Thank you, Dr. Qaadri, and thank you, ladies and gentlemen of the committee. It's a pleasure to be here today and to speak to the College of Massage Therapists' position on Bill 50, specifically to the acupuncture that is part of that. We too support

section 18 as it is presented, believing that our standards of practice and our scope support this process and that only regulated health professions should be permitted to perform acupuncture. It's worrisome at the moment that it's in the public domain. For appropriate public protection, we do believe it should be regulated.

Some health colleges have been around a long time, the group under the Drugless Practitioners Act and the Health Disciplines Act, 80 to 100 years, so we've got a lot of experience in regulating our respective professions. One of the things that came with the change of the legislation is the concept of overlapping scopes of practice. It was never meant with the new regime that we would go back to the old style of territorial scopes and only certain people being allowed to do certain things.

The philosophy under the RHPA has given the public greater access and greater choice in terms of their health care. It permits them to choose which practitioner or which group of practitioners they would like to get their care from, whether that is massage therapy, which can be obtained from a number of professions, or even the acupuncture that we are discussing today.

The college has, over a number of years, had members practising acupuncture. It became obvious to us that we needed to make a decision at council level as to whether or not that was appropriate to be offered within the scope of practice. After much debate, the council did make that decision. At that time, we developed policy to govern our members' conduct in relation to the provision of acupuncture to their patients.

At that point and in conjunction with that, we had to set the educational requirements, and I know this is of concern. So we approached it the way we had for the whole profession, which was to develop a set of competencies describing what a member would have to gain in their education in order to safely practise acupuncture. It was done through consultation with a number of our members who have training from China, Japan and India, with other health practitioners who provided acupuncture in our jurisdiction and a fair amount of research including the World Health Organization competency standards. We developed a list of competencies that our members must meet in order to practise acupuncture.

The college has, subsequent to that, reviewed curricula from a number of different programs in Canada and has approved them, and I have provided that list in the handout for you. We will review from time to time as information is submitted to us by our members. On average, we find that hours of training that we have approved that encompass the competencies are between about 800 and 1,000 hours of training. The only exception is the McMaster University course, which is 120 plus 40 contact hours of clinical training.

We believe that our ability to regulate our members through our scope, our standards and the regulations of the profession, ensures that the acupuncture treatment provided to clients of massage therapists is safe and is in the public interest. The rest is in the presentation, and I'm certainly not going to read it all, but I would be happy to answer any questions.

The Chair: Thank you, Ms. Worrad. We have about two minutes per side, beginning with Mrs. Witmer of the PCs.

Mrs. Witmer: Thank you very much for your presentation. I do appreciate your being here. Is this an area that many of the massage therapists would be working in, the whole area of acupuncture?

Ms. Worrad: Not a very large number of our members. We are at almost 8,000 members; we will be by the end of next week. Of the people who have gone through the process, there are 213 members who offer acupuncture meeting the requirements of the college.

Mrs. Witmer: What would be the reason that they would choose to do so?

Ms. Worrad: I would say the majority of our members who practise acupuncture are from the Orient, took the training—they have the five-year program—and wished to continue it, especially as they work within their own communities. There is a smaller number of our members who have begun to get the training because they have an interest in finding other ways, greater opportunities to offer care to their clients. Certainly with respect to pain management in soft tissue, acupuncture is of interest.

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Mrs. Witmer: So you're saying that the minimum competency standards—what were the hours that you had indicated? You mentioned the McMaster program of 110 and 40.

Ms. Worrad: Around 800 to 1,000 hours is what we've discovered when we looked at what courses offered those competencies we were seeking. The programs themselves ran from about 800 to 2,500 hours. We couldn't find the full package of competencies in other programs of shorter length.

Mrs. Witmer: Thank you very much.

The Chair: Thank you, Mrs. Witmer. Ms. Martel of the NDP.

Ms. Martel: Can I just clarify? The 800 to 1,000 hours is after you have completed your qualification as a registered massage therapist?

Ms. Worrad: Oh yes. The majority of our members come to us already with university degrees, as is common with many of the health professions. They then go to a massage therapy program, which runs from about 2,800 to 3,000 hours. They complete that training, and then once they're registered, acupuncture training for the majority is postgraduate, if they were not already trained in acupuncture before they entered the massage therapy program.

Ms. Martel: The standards of practice that I had for your college were from October 7, 2004. Have those been updated since because this legislation was coming?

Ms. Worrad: We have a policy that dates from that time. In your package I have included two standards of practice which have undergone a two-year consultation with the membership, were approved by a quality assurance committee last week and will go to council on December 1 for final approval.

I've also included in the package a joint standard developed by a number of colleges, which is a prime example of co-operation in developing a basic standard that all colleges agree to, and that's Infection Control for Regulated Professions. The information concerning sharps control is in that document.

Ms. Martel: My final question is around the scope of practice. As I look at the 23 health professions, there are some that jump out at me that would be less likely, as members, to perform acupuncture—maybe psychology or opticianry etc. I don't know what we do if those colleges decide that it is within their scope of practice to provide acupuncture. Do you think there are some professions that are more likely to be performing it, so that we should be restricting those colleges so that we're really covering off those who would more legitimately or more likely be providing acupuncture? I just look at the list, and I say it can't be everybody.

Ms. Worrad: I think there certainly would be some instances within the current group of professions that are regulated, and those would be the ones who have absolutely no patient contact.

The Chair: With respect, Ms. Martel, I now offer it to the government side.

Mr. Patten: I enjoyed your presentation. Thank you. Just along the same lines as Ms. Martel, I read this very carefully, and it said that there was a point at which your college decided, "Yes, we did feel that this would be an addition to our profession," so you worked on this for approval. What many of us are struggling with is the relationship between HPRAC, this piece of legislation and the ministry. It appears, or it could be interpreted, that there's no real approval process, which I believe is part of Ms. Martel's question. I wonder if you might help us with that. In working this through and justifying that within the scope of practice, did you not have some negotiations with the ministry on that?

Ms. Worrad: I think the challenge with acupuncture is that it has always been in the public domain, which meant anybody in the province could do it. The colleges have the ability to allow the profession to develop and evolve, to incorporate modalities and adjunct techniques into practice as it becomes evident that they're useful for patient care within the context of that scope of practice. With acupuncture, while in the public domain, there was no real opportunity to have a definitive decision by government to make this change. We are at that point in time now, and this is an appropriate phase in which those kinds of decisions, in consultation with the minister, would be made.

Mr. Patten: Thank you.

The Chair: Thank you, Mr. Patten, and thank you, Ms. Worrad, for your presence and your deputation today.

COLLEGE OF CHIROPRACTORS OF ONTARIO

The Chair: I'd now invite our next presenter, Jo-Ann Willson, registrar and general counsel to the College of

Chiropractors of Ontario. Ms. Willson, as you've seen, the protocol is 10 minutes in which to make your presentation. Please be seated. Please identify yourselves as well when you speak, and begin.

Ms. Jo-Ann Willson: Thank you very much for the opportunity to speak to you today. My name is Jo-Ann Willson. I'm the registrar and general counsel for the College of Chiropractors. I have with me Dr. James Laws, who is a chiropractor who uses acupuncture in his practice, and Dr. Bruce Walton, who is a consultant to the quality assurance committee and a peer assessor for the quality assurance program at the College of Chiropractors.

CCO is the regulatory body for the profession of chiropractic. Chiropractic has been regulated since 1925. Prior to the RHPA, we were regulating chiropractors under the Drugless Practitioners Act. Our council is composed of both chiropractors and public members appointed by the government, and I mention that because it's important to know that the public members have input into the development of standards of practice both in their involvement on the quality assurance committee and in their involvement on council itself.

Chiropractors are one of six professions authorized to communicate a diagnosis and to use the "doctor" title. It's important that you know that chiropractors receive approximately seven years of postgraduate training before they become registered. So they go to an accredited chiropractic educational institution, following which they do clinical competency exams, which are nationally administered, and they do a legislation and ethics examination, which is provincially administered.

The status quo is that chiropractors currently provide acupuncture services for the benefit of their patients. We have approximately 300 chiropractors who are providing acupuncture services. Chiropractors right now are reimbursed from WSIB and third party payers for providing acupuncture services. Acupuncture is taught at a number of chiropractic educational institutions, as well as in various university programs, including at McMaster.

How is acupuncture regulated currently in the chiropractic profession? We have, as do many of the other colleges, a number of statutory committees. We have a complaints committee and a discipline committee, and we have a quality assurance committee. As I mentioned, we've been regulating since 1925, and in that period of time there has not been a single case involving acupuncture and the discipline of a chiropractor. There have been only two complaints in that period of time that peripherally involved acupuncture, and we get, just so you have a basis of comparison, approximately 125 complaints a year.

In addition to responding to complaints, which is the reactive part of the college's processes, we have a proactive part, which is the development of appropriate standards of practice, and that particular function is done primarily through the quality assurance committee. In addition to developing standards of practice, there is a peer assessment program. Chiropractors like Dr. Walton

and others go into members' practices to make sure they are complying with the standards of practice developed by the college. So that is the proactive part.

I have included in the handout which you have before you the CCO's draft standard of practice on acupuncture. If I can just turn your attention to that, included in the standard of practice is an identification of the risks associated with acupuncture and what the college's expectations are with respect to consent. We have also adopted the WHO guidelines that talk about a minimum of 200 hours. I believe that was mentioned previously.

In terms of looking at chiropractors and whether or not they meet the criteria, what we look at is: Have they taken a course in the core curriculum or continuing education division of an accredited college? Is there an examination certification or other proof of clinical proficiency? What the standard requires is that they have liability insurance for the performance of acupuncture.

That particular draft standard was sent out for consultation. The quality assurance committee will be looking at the feedback on November 9, and the standard goes for approval to council on December 1.

In conclusion, the CCO supports the bill as it relates to allowing chiropractors to continue to provide acupuncture. We express the view that if it becomes a controlled act, members of the CCO should be permitted to perform that controlled act.

There was a question about HPRAC and so on. Part of the thrust of the HPRAC recommendations is collaboration amongst the colleges. We just express that we're certainly happy to collaborate with other regulators in the development of a common standard of practice, but in the interim we have something that we hope will protect the public.

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The Chair: Thank you, Ms. Willson. A minute and a half per side, beginning with Ms. Martel of the NDP.

Ms. Martel: I thank you for sending me the draft guidelines, because I used them in my remarks on second reading.

You will know I have expressed concerns about having a minimum standard. As a consumer, whether I go to get acupuncture from a massage therapist, a physiotherapist or a chiropractor, I should know that that individual has met some kind of minimum.

If I heard you correctly, this will probably be passed at council—

Ms. Willson: I expect so.

Ms. Martel: —and it will exceed the WHO guidelines, which I've referenced.

Ms. Willson: Yes, it does.

Ms. Martel: You're not opposed to having some kind of minimum standard, then, across the professions?

Ms. Willson: Not at all.

Ms. Martel: You spoke about a controlled act, because that's probably another way to do this.

Ms. Willson: It's an option.

Ms. Martel: This is why I asked for information this morning about the process to get access to a controlled

act. Have you previously, as a college, requested a procedure below the dermis as a controlled act from the minister? Do you have to do it that way? How does it work?

Ms. Willson: The way you would have to do it is you'd have to get amendments to the Regulated Health Professions Act, because right now, under the regulations, acupuncture is exempted from the controlled-act scheme under the RHPA. So you'd have to get it that way. In every submission—

The Chair: Thank you, Ms. Martel. With respect, Ms. Willson, I will have to offer it to the government side.

Mr. Kular: Thank you, Ms. Willson, for appearing before the committee. I really want to thank you for supporting Bill 50.

What an acupuncturist does is the insertion of needles. What is laser acupuncture?

Dr. James Laws: If I might answer that, laser acupuncture is simply using laser as the contact with the acupuncture point. I think other people have spoken previously about acupuncture being a meridian therapy or in some cases being based more on an anatomical model. It is simply what is being used at the site to stimulate that particular acupuncture point. In some cases it's cold laser that's used as the stimulation of the acupuncture point.

The Chair: Thank you. We'll offer it now to Mrs. Witmer of the PC Party.

Mrs. Witmer: Thank you very much for your presentation. Is your minimum standard, then, currently based on the WHO's 200 hours?

Ms. Willson: Yes, it is.

Mrs. Witmer: In the United States, is it 300 hours, their minimum standard?

Ms. Willson: That I'm not sure of.

Mrs. Witmer: To the doctor, if you were going to use acupuncture, which I understand you do in your practice, would this be something that people would seek you out for, or is it something that you would recommend once you've made your diagnosis and assessment?

Dr. Laws: It occurs in both ways. Some people come specifically because they know that acupuncture is provided in my clinic, so they'll come and ask for that. In many cases it's a matter of doing the normal workup that one would do and, following proper consultation and examination, giving advice about what the best modalities for care are in that particular circumstance. In some circumstances, acupuncture is clearly a valuable modality.

In my particular practice, I treat a lot of athletes. Acupuncture has become a very popular treatment amongst athletes for many, many reasons, but one of the reasons is that it doesn't involve taking any kind of medication that would be on the banned list. So there are many things that can be treated using acupuncture that otherwise would be treated using medications, many of which would be on a banned list. This has become a very valuable modality for those practitioners who are involved in treating athletes, particularly of a level where they have to be concerned about—

The Chair: Thank you, Ms. Witmer. Thank you to you as well, Ms. Willson, and to your colleagues for your presence and deputation on behalf of the College of Chiropractors of Ontario.

TANIA JOVANOVSKA

The Chair: I now invite our next presenter to please come forward, Ms. Tania Jovanovska. Welcome, and please be seated. As you've seen, you have 10 minutes in which to make your presentation, beginning now.

Ms. Tania Jovanovska: At first, just to present myself, I'm a medical doctor, educated in the Republic of Macedonia, with a master's degree in pediatrics from the Czech Republic. I obtained a degree in acupuncture in China, and last year in August I graduated from the Homeopathic College of Canada.

The Chair: Pardon me, Ms. Jovanovska. Would you mind coming just a little closer to the microphone?

Ms. Jovanovska: Okay. So it means that I have already 15 years of experience as a medical doctor and 11 years of experience as an acupuncturist. Today I will speak in the name of acupuncture.

Acupuncture is one of the oldest treatments of healing in the world. It has been used for hundreds and hundreds of years in effectively treating and healing patients. Acupuncture is a very complex way of treating patients, and has to be thoroughly studied and used in practice for many years for one to become familiar with its nature. As an acupuncturist who has studied acupuncture for many years, and practised, I can tell you that it is far more complicated to learn than it seems, and it cannot be learned properly in just several weeks or months. I have the best intent in mind for the safety and health of all Canadians. They deserve the best health care possible. I hope this new bill will bring positive results for all Canadians, as intended by the present government.

My suggestions for this bill are as follows. Acupuncture is a profession. Why should acupuncture be accepted as a separate profession from traditional Chinese medicine? Traditional Chinese medicine is interpreted as an integrated medical system. Chinese herbs, tuina Chinese massage, as well as acupuncture are all parts of traditional Chinese medicine, and their use is based on the theories of traditional Chinese medicine. Chinese medicine practitioners mainly treat their patients with Chinese herbs, and acupuncture practitioners apply needles on their patients. These two professions, according to traditional Chinese medicine, are parts of one integrated medical system based on the theories of traditional Chinese medicine, but use different tools, and should be treated as separate and equal professions.

Acupuncture does not only belong to traditional Chinese medicine. There are two other types of acupuncture besides the one based on the theories of traditional Chinese medicine: for example, Tung's acupuncture from Taiwan; or Japanese acupuncture. They have their own unique methods of choosing acupuncture points for treatment. According to my experience, the acupuncturist

can be familiar with any of the acupuncture methods even if they don't follow the theories of traditional Chinese medicine. That is why acupuncture has to be a separate profession.

Title: doctor of acupuncture. A doctor of acupuncture is a professional specialist who treats patients using acupuncture needles. There are more than 365 different points on the human body that can be treated with acupuncture needles. Of course, for a treatment, the right points have to be selected. To be able to select the right points, first a diagnosis has to be done. This is stated as "assessment" in Bill 50. That diagnosis can be based on the theories of traditional Chinese medicine and a specific theory for a specific type of acupuncture; for example, Tung's acupuncture.

When we speak for the theories of traditional Chinese medicine, it means the theories of the Zeng and Fu organs, meridians and collaterals, using four diagnosing methods, eight principles to analyze different clinical data of symptoms and signs in order to categorize the cause, pathogenesis and the characteristics of the disease, to determine the location of the disease, if it is located in the Zeng or in the Fu organs; the cause of the disease, whether it is internal or external; the characteristics of the diseases, if it is cold or hot; and the type of syndrome, whether it is a deficient syndrome or an excess syndrome. Then the right meridians and points have to be chosen by the acupuncture practitioner, and then needles or moxibustion or both could be used. Tonification or dispersion therapy can be applied.

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In order to meet the above requirements, the acupuncturist has to have the knowledge of human anatomy, physiology, theory of traditional Chinese medicine, diagnostics of traditional Chinese medicine, meridians, collaterals and acupoints, acupuncture technique and moxibustion, sanitation practice in acupuncture etc. It means that medical knowledge and diagnosing based on the theories of traditional Chinese medicine are mandatory in order to treat with acupuncture based on the theories of traditional Chinese medicine.

In order to practise the other type of acupuncture, the acupuncture practitioner has to have the knowledge of human anatomy, physiology, specific diagnostic principles, locations of acupoints, acupuncture technique and moxibustion, sanitation practice in acupuncture etc. It means that medical knowledge and diagnosing based on the theories of specific acupuncture, for example Tung's acupuncture, are mandatory in order to treat with this type of acupuncture.

That is the reason that both titles "doctor of acupuncture" and "doctor of traditional medicine" have to exist as separate and equal.

Grandfathering policy: Grandfathering must be included in the original Bill 50. The example of British Columbia is a very good recommendation. We should face and respect the history and reality of acupuncture practitioners and TCM practitioners. Those who have practised for a minimum of two years or more should be

automatically recognized without further examination. In future, legislation will be able to regulate acupuncture and traditional Chinese medicine professionals with a standard professional examination.

The Chair: Thank you, Ms. Jovanovska. We have about a minute or so per side, beginning with the government.

Mr. Kular: Thank you for the presentation. The question I have is, are you suggesting that there should be a college for acupuncture and a separate college for TCM?

Ms. Jovanovska: I just wanted to suggest that acupuncture doesn't belong to traditional Chinese medicine only. When you treat with acupuncture, you can follow traditional Chinese medicine rules, of course, but you can follow the other rules. For example, recently I had a patient with pain in her left hand and she couldn't close her fingers to make a fist. In the beginning I followed the theories of traditional Chinese medicine and had only partial success. After, I continued using the points following Tung's acupuncture, and success was 100%. If somebody follows the other rules, it doesn't mean that that person isn't doing acupuncture. When you compare Chinese acupuncture, that one just follows the rules of 14 meridians, five elements and all the others, but when you compare that one with—

The Chair: Thank you, Dr. Kular. With respect, Ms. Jovanovska, I have to offer it to the PC side. Mr. Arnott.

Mr. Ted Arnott (Waterloo-Wellington): Thank you very much for your presentation. I'm sorry I missed the start of it, but I just came from our weekly caucus meeting to make sure that our party had a presence here. Certainly you've got an interesting perspective to offer. I just wanted to follow up on Dr. Kular's question. Evidently, there is a technical difference between the way acupuncture is done through the traditional Chinese medicine methodology, if you will, and the other one you described. Could you briefly explain the differences in a way that someone like me might be able to understand, in layman's terms?

Ms. Jovanovska: Technical differences don't exist in how you apply the needle but in how you will think, which kinds of points you have to choose. There are big differences. According to Chinese medicine, for one session you can use 10 to 14 points, but if you just follow Tung's acupuncture, in that case you can solve the problem with only one needle or maybe maximum two or three. That's a big difference.

The Chair: Thank you, Mr. Arnott. With respect, to Ms. Martel of the NDP.

Ms. Martel: Thank you for your presentation. In terms of the grandfathering policy, you gave the example of British Columbia. Is it the case in British Columbia that those who have practised for a minimum of two years are automatically recognized? Is that why you included the minimum of two years there?

Ms. Jovanovska: I just mentioned two years. According to that, in that time if somebody practises only acupuncture and does not have any mistreatings, of

course, it means that person is eligible just to work with acupuncture. But I do not know exactly how many years they have in British Columbia.

Ms. Martel: I understand that the college will determine it, but it was the reference to British Columbia. I wasn't sure if British Columbia used a minimum of two years or if that was your own suggestion.

Ms. Jovanovska: That's my suggestion. I just give this example, that they give this grandparenting policy.

The Chair: Thank you, Ms. Jovanovska, for your presence and deputation.

DAN MICU

The Chair: I would now invite our next presenter, Mr. Dan Micu. Please come forward, Mr. Micu. As you've seen, there's 10 minutes in which to make your presentation. Please be seated, and your time begins now.

Mr. Dan Micu: Chairman, members of government, members of Parliament, first of all, I would like to thank you all for the opportunity you give us to have public hearings on Bill 50. I fully support Bill 50, and I'm very sorry that some of my colleagues prefer to oppose the bill instead of proposing specific, objective and positive changes to that. I would think that a more diplomatic approach would move ahead the regulatory process much faster. Also, I'm not so happy, and I'm very surprised, about the approach of some of the other health professionals that do not consider at all the benefits of a traditional Chinese medicine regulatory process.

I would like to thank you all, members of government, honourable members of Parliament, for the mature and responsible manner in analyzing the issues of this bill. I am convinced that Bill 50 will pass, in the benefit of the public. However, I would respectfully suggest taking into consideration, if possible, a few opportunities for improvements and comments.

About myself: I have a bachelor of science in engineering. I graduated with a quality assurance diploma at Seneca College, Toronto; first traditional Chinese medicine studies in Romania between 1991 and 1993 for 500 hours. Also, I graduated with more than 2,400 hours in the acupuncture diploma program at the Toronto School of Traditional Chinese Medicine. I've been a member of the Canadian Society of Traditional Chinese Medicine and Acupuncture since 2003, and a member of the American Society for Quality organization since 1996. I have had a private acupuncture and tuina massage practice in Toronto since 2003.

Opportunity for improvement number 1: In order to clarify the scope of practice and give a more specific definition of traditional Chinese medicine, I would suggest that section 3, scope of practice, be amended as follows:

"The practice of traditional Chinese medicine is the assessment of physical or mental condition of an individual through traditional Chinese medicine techniques and treatment to promote, maintain or restore health using one or more of the four primary therapies"—acupuncture

and moxibustion; traditional Chinese manipulative therapy, tuina, and rehabilitation exercises, lian gong or dao yin; traditional Chinese energy control therapy, qi gong, and tai ji quan; and prescribing traditional Chinese medicinal formulas and Chinese food cure recipes.

I included mental condition above because traditional Chinese medicine has a holistic perspective, and many physical disorders have a mental or emotional root cause and vice versa.

Opportunity for improvement number 2: It would be necessary that a new section be added after section 3 as follows:

"Authorized acts

"In the course of engaging in the practice of traditional Chinese medicine, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following": communicating a diagnosis; performing a procedure on tissue below the dermis; prescribing, dispensing, selling or compounding a traditional Chinese drug or related natural health products. There are five points here.

Opportunity for improvement number 3: An addition to the definition paragraph of section 7, "Restricted titles," would be necessary as follows:

"(i) 'traditional Chinese medicine practitioner' is the title reserved for the exclusive use of registrants of the college.

"(ii) 'acupuncturist' is reserved for those members of the college who are not qualified to use 'traditional Chinese medicine practitioner' as their training is only in acupuncture."

Number (iii), "abbreviation," remains the same.

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Comments:

(1) Minimum standard for acupuncture: Practising acupuncture by other health care professions cannot be stopped or restrained. It would be necessary that a minimum standard of practising acupuncture be recommended by the college to the other colleges as they are defined in the Regulated Health Professions Act, schedule 1, as applicable. Responsibility would remain under the other colleges and ministry to adopt such a minimum standard for practising acupuncture by these colleges' members. The public will be aware of that and will proceed consequently.

Ultimately, we should be interested that more and more health professionals use acupuncture at or above the minimum standard. This is the best educational exercise in widely promoting acupuncture and TCM for the benefit of the public. The second step is going to be done by those practitioners who want to improve their knowledge and discover the effectiveness of traditional Chinese medicine.

Ultimately, our aim is to develop sooner or later an integrative medicine, together with other health professionals, for the benefit of the public as well. This is just because most of us TCM practitioners consider that traditional Chinese medicine can be a complementary medicine rather than an alternative one. I have to say

that, although for many acute or chronic disorders, TCM remains as the last resort. However, I am convinced and I strongly believe that TCM can provide the highest, most efficient—I underline “most efficient”—safe and good-quality standard for acupuncture.

(2) The grandfathering issue should be left at the college's discretion for the transition period.

(3) The most important thing for traditional Chinese medicine's future in Ontario is that in the college of traditional Chinese medicine be appointed and involved task forces composed of objective individuals with expertise and experience in traditional Chinese medicine, health professions regulation and quality assurance to provide advice and to help in handling specific and difficult issues.

Thank you.

The Chair: Thank you, Mr. Micu. About a minute per side, beginning with Mr. Arnott.

Mr. Arnott: Thank you very much for your presentation. On the last page, point 2, you said grandfathering should be left to the college's discretion for the transition period. Would you care to offer the committee your personal opinion as to how that issue should be handled?

Mr. Micu: You know, actually, we cannot set aside the fact that a lot of acupuncture and traditional Chinese medicine practitioners do that for many, many years, 10 or 20 years. But the college is supposed to have a body of knowledge, a minimum body of knowledge, so minimum conditions and criteria. Following an interview to decide, and following—actually, according to their credentials and to prove that they did, for example, practise acupuncture for 10 or 20 years; I don't know how many years is the best figure here, and from case to case to provide the right to—

The Chair: Thank you, Mr. Arnott. Ms. Martel?

Ms. Martel: Thank you for your presentation today. I want to focus on minimum standards. You've talked about a minimum standard being recommended, and I'm assuming recommended by the TCM college to other—

Mr. Micu: Yes, by the college.

Ms. Martel: Yes, to other colleges. But it would be your view that the other colleges monitor that or regulate that minimum standard, not the TCM college?

Mr. Micu: Right.

Ms. Martel: You said right at the start, “Practising acupuncture by other health care professions cannot be stopped or restrained.” Do you think that all the 23 regulated health professions should have access to practising acupuncture?

Mr. Micu: My personal opinion is not all. For example, a speech therapist: I don't know how much it can help him or her to practise acupuncture. I would leave this for more thorough analysis to the college.

Ms. Martel: The TCM college?

Mr. Micu: The TCM college.

The Chair: Thank you, Ms. Martel. To the government side. Mr. Fonseca.

Mr. Peter Fonseca (Mississauga East): Mr. Micu, thank you very much for your presentation. It was very

refreshing and open the way that you spoke to working in collaboration with others in partnership. This is what we want to see with the other regulated health professions. We've heard from the chiropractors, the physiotherapists and others here in terms of how they use acupuncture within their practices.

I'd like to hear from you: As the college is formed, how do you see the college working with the other regulated health professions in partnership towards moving acupuncture forward in Ontario?

Mr. Micu: If I would decide that, I would form a consultative committee. In two days here, we heard different opinions. If for six months or for one year, all members of this body would work together, for sure it would come up with something much better than we can decide for now.

The Chair: Thank you, Mr. Fonseca. Thank you to you as well, Mr. Micu, for your presence and presentation today.

GLOBAL CHINESE MEDICAL AND ACUPUNCTURE COLLEGE

The Chair: I will now invite our next presenters: Ms. Wei-Ling Qiu, president, and Zhi Chen of the Global Chinese Medical and Acupuncture College. I would invite those presenters to please come forward and be seated. Ladies, as you've seen, you have 10 minutes in which to make your presentation. Please identify yourselves for the purposes of the permanent record, Hansard. Please begin.

Dr. Wei-Ling Qiu: *[Remarks in Cantonese.]*

Dr. Zhi Chen: My name is Zhi Chen. I'm going to translate Dr. Wei-Ling Qiu's speech. She's the president of Global Chinese Medical and Acupuncture College. We support the Bill 50 legislation of TCM.

The patient will have the standard to choose a licensed practitioner to help them to treat their disease. The patient could also access acupuncture more easily and with more confidence after the legislation. The licensed practitioner should also be treated with equal rights and position with other medical professionals.

Acupuncture will also develop faster with the support of the Ontario government.

We also think the grandfathered practitioners who at least have more than three to five years' practice experience should also be licensed as the college graduate, because the grandfathered acupuncturists will have some specialty heritage from ancient Chinese medicines. Acupuncture is a part of traditional Chinese medicine, so TCM should also be legislated at the same time.

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Dr. Qiu: *[Remarks in Cantonese.]*

Dr. Chen: The grandfathered practitioners should have more than three to five years of experience.

The Chair: Thank you very much. We have a generous amount of time per side, about two minutes or so each, beginning with the NDP.

Ms. Martel: Thank you for your presentation. My first question is, did you say that acupuncture should be regulated at the same time?

Dr. Chen: TCM has different parts. Acupuncture is part of TCM.

Ms. Martel: Is your suggestion that it be regulated as a profession as well?

Dr. Chen: You mean acupuncture?

Ms. Martel: Yes.

Dr. Chen: I think that TCM should be regulated. It has different parts, so acupuncture would be inside TCM.

Ms. Martel: Would it help if the name of the college included acupuncturists?

Dr. Chen: Yes.

Ms. Martel: Okay. So we could do an amendment that included not just traditional Chinese medicine practitioners, but also acupuncturists—

Interjections.

Dr. Chen: Yes.

Ms. Martel: You'd be interested in that? Okay.

Dr. Qiu: *[Remarks in Cantonese.]*

Dr. Chen: We would suggest that acupuncture be regulated at the time TCM is regulated.

Ms. Martel: That both be regulated under the same college.

Dr. Chen: Yes, that's right.

The Chair: Thank you, Ms. Martel. To the government side.

Mr. Khalil Ramal (London-Fanshawe): Thank you very much for your presentation. I was listening when you talked about grandfathering all the people who have worked in the profession for five or six years. You don't think there should be an exam to select the people who are practising without any conditions, without any regulations, as they're doing now?

Dr. Qiu: *[Remarks in Cantonese.]*

Dr. Chen: With the Chinese government, a person practises for at least five years under a master. Then, if the master allows them to go out and practise, they'll be okay.

Mr. Ramal: But see, we live in Ontario—

The Chair: Thank you, Mr. Ramal. To the PC side.

Mr. Arnott: I just want to thank you very much for your presentation. We understand that your organization supports Bill 50 in principle and that you have some additional ideas as to how to implement it, and those will be of great assistance to the committee.

The Chair: Thank you, Ms. Qiu and Ms. Chen, for your presence and deputation on behalf of the Global Chinese Medical and Acupuncture College.

PAOLO BAUTISTA

The Chair: I now invite our next presenter, Mr. Paolo Bautista. Welcome. Mr. Bautista, you have 10 minutes in which to make your presentation. I invite you to begin now.

Mr. Paolo Bautista: Good morning. My name is Paolo Bautista. I'm a student of traditional Chinese medi-

cine and acupuncture, a patient of its modalities and, more importantly, a citizen of this community. I'd like to thank you for providing me with this opportunity to help in developing Bill 50 into a bill that will considerably enhance the quality of our province's health care.

Bill 50 is a pivotal bill in this province, as it answers calls that have been voiced strongly over the years. All over the country, emergency room wait times are increasing, the number of doctors is decreasing, family practices in new subdivisions are no longer accepting new patients, and more students than ever are unable to attend medical schools due to rising tuition costs.

Oftentimes, the solution to a problem is not a matter of finding the right answer; it's a matter of asking the right question. In regard to our present dilemma, the answer is not more hospitals, more doctors and more money. The question is, how do we prevent our people from being sick in the first place? How do we stay out of the emergency room?

This is the ultimate precept of traditional Chinese medicine. True healing is not in the disappearance of a symptom, it's the elimination of its existence. To get rid of a headache is not to heal; to never get a headache is true healing. It is my personal goal that Bill 50 exude the true essence of TCM and acupuncture, because only in this way will society experience its true benefits and ultimately help alleviate our current problems, not perpetuate new ones.

As Bill 50 stands, I see certain areas which can potentially lead to new problems. Bill 50 does not make exclusive the practice of TCM and its modalities to traditionally trained practitioners. Bill 50 currently allows acupuncture to be put into the hands of those who aren't properly educated in its ways. To illustrate, acupuncture is merely a branch of a tree that is traditional Chinese medicine philosophy. What allows that branch to grow and essentially heal a patient are the roots of TCM philosophy. Together, the tree flourishes, but separated, the branch dies.

TCM and acupuncture is a unique and effective modality, not only because of its approach but because of its theory and understanding. Unlike other current health modalities, TCM is unique because it does not heal on a physical level; TCM heals on an energetic plane. Chinese medicine believes that a physical condition is merely a reflection of one's energetic state. A misunderstanding or absence of this knowledge of energy can be quite dangerous, if not lethal. Our goal in treatment is to achieve a state of energetic balance, as the body will follow suit. This often involves an increasing and decreasing of energy in certain areas. To increase one's energy is as simple as turning the needle in a certain direction upon insertion; to reduce, turn the other direction upon insertion. These seemingly simple decisions are all deduced from a very complex system of diagnosis from Chinese medicine philosophy and thousands of hours of training. Even the most seasoned of practitioners are capable of making mistakes. A mistake in choice of direction can potentially heal a patient or, conversely,

induce sickness ranging from headaches and migraines to extremes such as strokes and heart attacks.

Even the most precise of surgeons are capable of making mistakes, some small and some deadly. For chiropractors, the reality of adjusting a patient's spine to better their health or potentially cause paralysis is a matter of millimetres. Surgeons are one incision away from causing death. Physicians are one prescription away from over-dosage. As a doctor, one misdiagnosis is the difference between life and death. Doctors continuously walk this very fine line on a day-to-day, patient-by-patient basis. What saves these doctors and, ultimately, their patients is the depth of their knowledge of their craft and the skills they have developed from such dedication to it.

The picture I attempt to illustrate is that philosophy and action are inseparable, and at times one and the same. A surgeon without proper training will make very deadly incisions, physicians will make very lethal prescriptions without their knowledge of the pharmaceutical tree, and chiropractors can paralyze without the knowledge of the human spine. Proper education and a respect for the tradition in these fields garner an understanding of the fragility of human life. Life and death are millimetres away in this field, and what keeps us alive is a respect for philosophy and the actions that it guides. Kept together, we are safe, but separated, we're in danger. Acupuncture is the knowledge of energy. It is what heals people. A misunderstanding of this energy, or, even worse, an absence of this philosophy, is dangerous.

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Bill 50 permits this separation. As the bill stands, those who claim to be Chinese medicine doctors and acupuncturists are held to the highest of standards, as are all other doctors in their respective fields. However, Bill 50 does not make exclusive the practice of acupuncture to those trained in TCM. In fact, one can be an acupuncturist without having any knowledge or training in the philosophy that has birthed and guided acupuncture for 1,000 years. An acupuncturist meeting the 200-hour standard that Bill 50 has imposed on those not traditionally trained in TCM is permitted to practise, and for those with less than 200 hours or even any training? They can treat too, just as long as they do not claim to be acupuncturists or hold the title of doctor. This is analogous to a physiotherapist performing surgery, a physician performing chiropractic adjustments or, even worse, your local Domino's Pizza delivery guy prescribing you Prozac, just as long as he doesn't call himself "doctor," of course. This is wrong because this is where philosophy and action have been separated. The philosophy guides the action, the treatment of the patient. This bill permits the separation of TCM theory and acupuncture.

Currently, there have been two main branches of acupuncture: traditional Chinese medicine, which is steeped in 1,000 years of tradition and knowledge, and anatomical acupuncture, also known as adjunct acupuncture. This concept of energy is absent in anatomical acu-

puncture. It uses needle placement based on physical landmarks. In other words, anatomical acupuncture completely ignores the theory that has historically guided acupuncture methods. Anatomical acupuncture attempts to heal on a physical plane—an endeavour that true acupuncture was never meant for—and simply causes more harm than good because of the misuse and absence of its guiding philosophy.

We would not allow a surgeon to perform surgery on our bodies unless we were sure of their expertise in the correct education of their craft. We would not allow a chiropractor to adjust our spine unless they were educated in the principles that have guided chiropractic care, nor would we allow physicians to prescribe drugs without a thorough knowledge in the field of pharmaceuticals. By allowing acupuncturists not steeped in the education of traditional Chinese medicine, we commit these mistakes, we create new problems for our society and do not achieve the original intent of this bill: to provide the best possible health care to Ontarians. Anatomical acupuncture does not include the concept of energy and thus gives rise to many potential health hazards.

In closing, acupuncture heals only through traditional Chinese medicine philosophy. Without its guiding principles, acupuncture will not embody the intent of this bill, what it set out to do: to provide Ontarians with the highest level of health care. I recommend that for the health and safety of all Ontarians, Bill 50 limit the practice of acupuncture only to those trained in traditional Chinese medicine. Thank you.

The Chair: Thank you, Mr. Bautista. There's just half a minute each.

Mr. Patten: Gee, I got excited about a good part of what you had to say, but I must ask you this. You're suggesting that unless the regulated professions have full training as an acupuncturist, they should not be able to apply that within their scope of practice.

Mr. Bautista: Full training in traditional Chinese medicine, sir.

Mr. Patten: Yes. What would that mean, at the same standard as whatever the college comes up with in terms of what is required for an acupuncturist?

Mr. Bautista: Absolutely.

Mr. Patten: At the moment, you know that with this bill a regulated profession would not be able to say, "I'm a chiropractor and an acupuncturist," unless they had the full program. But they can still use acupuncture as an adjunct therapy which—

The Chair: Thank you, Mr. Patten. To Mrs. Witmer of the PC Party.

Mrs. Witmer: I would just like to say thank you very much for your presentation.

The Chair: Ms. Martel?

Ms. Martel: Thank you for your presentation. I appreciated your passion. I'm sure you're going to do very well in your studies.

Here's where I'm coming from. I think that the regulated health professions—not all of them; some of them—should be allowed to continue to provide acu-

puncture as adjunct acupuncture to deal with pain. I think we should have a definition for that in the bill, and I think we should have a definition, then, for “acupuncture” as part of traditional Chinese medicine, to make the distinction. What do you think of that option?

Mr. Bautista: I think that anybody should be able to do acupuncture as well, just as long as they're educated in where acupuncture came from. Acupuncture is not just merely the act of putting a needle in. Why you're putting the needle in and where you're using it is influenced by the theory and philosophy of TCM. The whole body of that is acupuncture. When you separate just putting the needle in, with a completely different principle of what influence—

The Chair: Thank you, Ms. Martel, and thank you to you as well, Mr. Bautista, for your presence and deputiation to this committee.

BOARD OF DIRECTORS OF DRUGLESS THERAPY—NATUROPATHY

The Chair: I now invite our next presenter, and that is Ms. Angela Moore, the chair of the Board of Directors of Drugless Therapy. Ms. Moore, please be seated. As you've seen, you have 10 minutes in which to make your presentation, and I invite you to begin now.

Ms. Angela Moore: Thank you, Mr. Chair. I am a naturopathic doctor and the chair of the Board of Directors of Drugless Therapy—Naturopathy. We will be providing a written submission on Bill 50 to the committee as well.

I wanted to give you a little bit of background about the naturopathic profession. Naturopathic doctors are primary care practitioners. We're members of a self-governing profession that has been regulated in Ontario since 1925. We are the only remaining profession under the Drugless Practitioners Act, which has been referred to a couple of times before. Three successive HPRAC reports, in 1996, 2002 and most recently in 2006, have recommended that naturopathic medicine be included under the RHPA because the Drugless Practitioners Act is an antiquated piece of legislation that does not provide the level of protection afforded by the RHPA. We are hopeful that that legislation will move forward very soon.

With respect to Bill 50, the naturopathic profession, I believe, is uniquely positioned to comment on TCM and acupuncture. All of our registrants, all naturopathic doctors in Ontario, are required to complete written and practical examinations in traditional Chinese medicine and acupuncture. The Canadian College of Naturopathic Medicine here in Toronto provides 230 hours of study devoted exclusively to understanding the philosophy of TCM and acupuncture. In addition to those 230 hours, the modality is integrated into many other courses in the curriculum, including botanical medicine, clinical studies, foundations, primary care, and it's a vital component of the 1,500 hours of supervised clinical practice.

Naturopathic doctors are educated and trained to formulate a classical TCM diagnosis and to implement a

treatment plan accordingly. In addition to the training that all NDs receive prior to regulation in Ontario, many also choose to undergo additional education in North America and/or Asia.

We applaud the move to regulate TCM and acupuncture under the RHPA and also the move to restrict the practice of acupuncture to members of colleges whose statutory scopes will permit its use, to have specific standards of practice for acupuncture in place and members who have demonstrated competence to perform it safely and effectively.

Acupuncture is clearly within the scope of practice for naturopathic doctors. All NDs have demonstrated competency in this modality, and our board has had standards of practice in place for many years.

I just want to make some final comments on the training and education of naturopathic doctors. In order to practise in Ontario and in all regulated jurisdictions in North America, naturopathic doctors require a minimum of seven years' post-secondary education; three years of pre-med, the standard being a baccalaureate degree; and that's followed by graduation from a four-year program at a naturopathic college. The curriculum at a naturopathic college is 4,400 hours of clinical sciences, naturopathic modalities, including TCM and acupuncture, and 1,500 hours of supervised practice in a teaching clinic.

In addition to TCM and acupuncture, NDs use the other core modalities: botanical medicine, homeopathy, nutritional medicine, lifestyle modification and counselling, manipulation of the joints and physical therapeutics.

It's also important to note that the general medical education that's provided includes a thorough grounding in medical sciences that ensures a comprehensive understanding of the serious risks that can be associated with the practice of TCM and acupuncture.

As I said, we will be making a written submission to the committee as well, and we really appreciate the opportunity to appear before you today. I welcome your questions.

The Chair: Thank you, Ms. Moore. We have about a minute and a half per side, beginning with Ms. Witmer.

Mrs. Witmer: You've indicated you're going to give us a written submission?

Ms. Moore: Yes.

Mrs. Witmer: With a similar focus as to what you have conveyed to us just now?

Ms. Moore: Yes, and to provide you with our standards of practice.

Mrs. Witmer: Okay. Briefly, then, is that what you've just spoken to now, the standards of practice, or are you going to go into more detail?

Ms. Moore: We'll provide you with the actual document, and I can certainly go into more detail now if that's what you'd like.

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Mrs. Witmer: Sure. That would be very helpful.

Ms. Moore: The specific standards of practice for acupuncture involve the actual conditions under which an MD should be practising acupuncture, and that involves

proper disposal of needles, having a sterile field, and all of those things related to infection prevention.

Of course, in the education and training, it's really important to have a very good knowledge of anatomy so that you can avoid inserting needles where they shouldn't be inserted and knowing exactly where and how deep to insert those needles.

Mrs. Witmer: All right. Thank you very much.

The Chair: Thank you, Ms. Witmer. Ms. Martel?

Ms. Martel: Thank you very much. I did get a copy of the standards previously from the board. So I appreciate that.

You agree that regulated health care professionals should provide acupuncture if it's in their statutory scope of practice, their standard of practice, and if members have competency in this modality. The dilemma that I'm having is to figure out which members of which colleges have that. I don't know if you have any suggestions to the committee about whether or not you think there should be some restrictions placed on which colleges should be allowed to practise acupuncture.

Ms. Moore: I can understand your dilemma, because acupuncture has been in the public domain. Basically, anyone has been able to do it. I think that any standards that are put in place should be done in consultation with the new college of TCM in particular, and it should be a collaborative effort with all of the colleges that are regulated in Ontario. I don't think I can speak to the specifics of that at this point, but definitely having standards of practice in place, having the knowledge of the basic medical sciences so that the risks are minimized, making sure that people have a really thorough education to minimize those risks in practice. I don't think I can answer you any more specifically than that right now. Perhaps in our written submission we can try and do that.

The Chair: Thank you, Ms. Martel. To the government side: We have Mr. Patten.

Mr. Patten: Thank you very much for being here. I must commend you on your presentation. I look forward to the written details. I must tell you that, when I had cancer, I found naturopathic medicine to be very helpful to me and extremely important and, in fact, more useful than Western medicine was in understanding cancer and various forms of treatment. So I throw that out to you.

I know that your college is pursuing being recognized and you'd like to be part of the regulated group as well. If so, what would be the position of your college vis-à-vis working with the other colleges in terms of arriving at continuing to increase quality related to, particularly, acupuncture?

Ms. Moore: We agree definitely that there should be collaboration between all of the colleges that are practising acupuncture and that are wanting to practise it and that the lead should probably come from the college of TCM and acupuncture, the new college. Is that answering your question?

Mr. Patten: Yes, in part.

Ms. Moore: What part didn't I answer?

Mr. Patten: No, it's okay.

If I might use the occasion just to mention to Ms. Martel, because it sounds like there's this cloak of secrecy here, we can provide you with the colleges at the moment that utilize, within their scope of practice, acupuncture. I just used the occasion to share that with her.

Thank you very much.

The Chair: Thank you, Mr. Patten, and thank you to you, Ms. Moore, for your deputation and presence on behalf of the Board of Directors of Drugless Therapy.

Ms. Martel: Just before we start with the next presentation, I'd appreciate it if Mr. Patten could answer the following questions: In what the ministry gave us, the briefing package, there's a listing of the 23 regulated health professionals. What I'd like to know is, is it the intention of the ministry to allow each of these 23 to practise acupuncture? If it isn't, I would like to know which ones are going to be allowed to practise acupuncture based on scope of practice and their standards. That's what I would really like to get clarification of.

Mr. Patten: The only thing I could do is provide you with some information from the ministry. I can't speak for the ministry except to say that there are 23 of them, and most of them do not utilize TCM or acupuncture. We can describe which ones do and how it fits within. What would happen from here on in with the application of this is that it wouldn't mean that any of the others would say, "Well, we're just going to start to operate tomorrow and apply this." That would not happen. The ministry has a role—

The Chair: If I may intervene for a moment: Ms. Martel, if it's suitable to you, we'll ask for a formal reply to that in writing from ministry officials.

Ms. Martel: Can I just add to that, very briefly? I'd like to know, then: If another college that doesn't normally practise acupuncture right now wants to practise acupuncture, do they have to get the approval of the ministry in order to do that? From another presentation, we heard that the board of the particular regulated health profession decides if it's in the scope of practice of their college, so I want to know if there's going to be a ministerial approval process for those who don't practise acupuncture regularly now.

The Chair: Just to expedite this process and to ensure, Ms. Martel, that you receive the information that you're after, might I invite you to submit this question in writing by this afternoon's session, and then we'll communicate that to ministry officials.

JASMINE SUFI

The Chair: We'll now invite our next presenter, Ms. Jasmine Sufi, to please come forward. As you've seen the protocol, you have 10 minutes in which to make your presentation. Please be seated and please begin.

Ms. Jasmine Sufi: My name is Jasmine Sufi. I studied here in Toronto. I'm currently a traditional Chinese medicine and acupuncture practitioner. I own and practise in a private practice here. My education includes a four-year, full-time program at the Michener Institute for

Applied Health Sciences, as well as a four-year honours bachelor of science degree. My clinical practice includes Mount Sinai, the Wasser Pain Management Centre and St. John's Rehabilitation Hospital as well as my private practice.

I do support Bill 50 and I do support the formation of the college of traditional Chinese medicine, including acupuncture. I do feel that the way acupuncture is described in the bill—it's represented as a modality. I believe that acupuncture is a comprehensive medical system based on the theory of traditional Chinese medicine. It is very deeply embedded in traditional Chinese medicine theory and is capable of treating both muscular conditions and internal medical conditions. That's what the word "acupuncture" means to me.

Currently, there are many forms of needling that are being practised by many different professionals. The variety of educational backgrounds range from 20 hours to over 3,600 hours of training. My concern is the lack of educational standards, and I'm hoping that the implementation of a college would establish a standard of education. That's my priority. The implementation of the college will also allow the general public to understand the meaning of acupuncture and be able to rely on it based on the standard that is implemented by the college.

The other section that's of big concern is section 18, where it states that all other regulated health professionals can practise acupuncture within their scope of practice. My concern, which has been stated over and over again by the other speakers as well, is: How will we establish a standard of practice of acupuncture if other regulated health professionals are not regulated by the traditional Chinese medicine college, once formed? If they are not a member of the college and are able to practise acupuncture, how will their own college set a standard? That's my concern. I think there won't be an even playing ground. If all 23 colleges are allowed to set their own standards without the collaboration of the new college of TCM, then we will still continue to have variation in education, ranging from 20 hours to 3,600 hours, and it actually doesn't change anything. The general public will not know the difference and will not have a change in the quality of treatment from acupuncture if that's the case.

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I do understand that acupuncture is useful in other scopes of practice but truly believe that there needs to be a standard that is set and believe that the standard should be set by the traditional Chinese medicine college. That's the only way to actually have one standard and one disciplinary board to ensure the safety of the public.

The other issue is, if the TCM college is able to set the standards, someone has to be given the responsibility to ensure that there are appropriate disciplinary actions put in place in each college. There are particular standards, again, in each college. I think that will ensure that acupuncture is practised appropriately.

My other question, I guess, is insurance. Because I have my own practice, I do encounter insurance coverage

as well. I guess my concern is: How will insurance companies and the general public decipher between the treatment of another scope, such as physiotherapy, chiropractic, naturopathic, and acupuncture? Currently, all those other professionals are able to claim those services as well as acupuncture. So they're able to double-bill both services, whereas TCM practitioners are at times excluded from insurance companies because there isn't a standard and because the insurance company also is not aware of what acupuncture really is and it's embedded in traditional Chinese medicine. So that's my other concern, I guess. I don't know if you have an answer, but my concern is, would they still be able to double-bill under the name "acupuncture" as well as their own scope of practice?

In conclusion, my thoughts are that all regulated health professionals should in some way either be a member of the traditional Chinese medicine college or have that college set a standard, in collaboration with other colleges, for their scope of practice as well. The next scenario would be, it remains the way it is, except that other professionals not meeting the minimum requirements under the traditional Chinese medicine standards will not be called acupuncturists but would be called another name.

The Chair: Thank you, Ms. Sufi. We have about two minutes per side, beginning with the government. Mr. Leal.

Mr. Jeff Leal (Peterborough): Thank you so much for your presentation. You spent some time talking about standards, and I think for the public that's a vital need to establish. In your view, how can we make that happen through the college? What would be your views on that?

Ms. Sufi: That all members practising acupuncture be under the new college that sets the standards. That would be my solution, because that way there's only one standard.

Mr. Leal: When you've had your opportunity to talk to your colleagues, is that a general consensus out there?

Ms. Sufi: I practise with two other colleagues and I believe that is their consensus as well. I think that's the only way to actually establish a standard, because that way it's ensured that there's only one standard as opposed to 23 different standards.

Mr. Leal: I think it's important to offer choice to the people of Ontario. My colleague Richard described his experience, and more and more you're hearing about people seeking alternatives that have really assisted them in their particular medical condition. To me, that's one of the important aspects of Bill 50.

The Chair: Mr. Fonseca?

Mr. Fonseca: Jasmine, here in your CV you show that you've worked at Mount Sinai and you did mention St. John's Rehab. Have you encountered or been in an area where you've been with others from other regulated health professions that perform acupuncture?

Ms. Sufi: Yes, I have. A lot of my patients also bring me feedback in terms of their experience, if they have

had experience prior to my services, with acupuncture. It's usually with another health professional.

Mr. Fonseca: But you personally—have you met with physios or chiros who also do acupuncture? Have you had any discussions with them?

Ms. Sufi: Yes, I have, and I think that it's important within their scope of practice—they do view it as an essential service within their scope. But I think their understanding of its abilities is limited, and sometimes, because there is a fine line between—

The Chair: Thank you, Mr. Fonseca. With respect to Ms. Sufi, I offer it to the PC side. Ms. Witmer.

Mrs. Witmer: I think we have a good appreciation now—thank you very much for coming forward—as to what you believe is necessary and that obviously the minimum standard would be the responsibility of the college of TCM. You're suggesting, then, that anybody from the other colleges who practises acupuncture, instead of using the word “acupuncture,” would use the terminology “intramuscular stimulation.” Is that right?

Ms. Sufi: Yes.

Mrs. Witmer: That would be regulated by their own college, then, you're suggesting. There would be no connection to TCM if they were to call it something other than acupuncture.

Ms. Sufi: That's correct.

Mrs. Witmer: All right. Thank you very much.

The Chair: Thank you, Mrs. Witmer, and thank you as well, Ms. Sufi, for your deputation and presence at this committee.

CAVELL TYRRELL

The Chair: I invite now our next presenter, Ms. Cavell Tyrrell, to please come forward. Ms. Tyrrell, as you've seen, you have 10 minutes in which to make your presentation. Please be seated and please begin.

Ms. Cavell Tyrrell: Thank you. I've come to this committee to speak about this from the point of view of a retired registered nurse who has been a consumer of traditional Chinese medicine for over 12 years now. Many years ago, I would not have considered using what I would have called alternative medicine, because I was certainly steeped and trained and practised in the traditional medical model; however, it was essential that I get help from somewhere else, and so I did.

Prior to my introduction to TCM, I was a 67-year-old woman who was prone to frequent colds, which usually progressed to pneumonia almost every winter, and had had multiple fractures due to osteoporosis, all this in spite of a reasonably healthy lifestyle. In these subsequent years, I have had fewer broken bones, and those I have had have healed in three weeks instead of the usual six, and that's been very significant. I have not had pneumonia in years.

A year and a half ago, I had a serious heart attack and, to the surprise of the cardiologist, I suffered no permanent damage in spite of its severity. I was also told that given my family history, with my sisters dying and

having bypasses, I myself would normally have had this attack 10 years earlier had my body not been in such healthy condition for a 78-year-old. I feel that my healthy condition has been in no small measure due to my ongoing experience of receiving traditional Chinese medicine.

Therefore, I'd like to say why I feel that traditional Chinese medicine needs to be regulated. I guess I should have said earlier that when I was a registered nurse I considered it alternative. I no longer consider TCM alternative; I consider it complementary. It doesn't negate or push out any other modality; it's complementary.

We need it to be regulated to improve the health of Ontario's population. We hear a lot these days about our health care costs. I feel that I myself have been in the lower echelon of people using health care since using TCM. When TCM is part of a person's health care, there is less need to rely on the medical system. I can personally attest to that. Strokes recover faster, fractures heal faster and immune systems are healthier. By the way, there are studies done comparing how well strokes do under TCM versus without TCM.

Also, protecting the safety of the public by ensuring the quality of TCM: As things now stand, anyone with a minimum of training can offer acupuncture and others with additional but still inadequate training can diagnose and prescribe medicine. This can be very dangerous, as a faulty diagnosis and wrong medicine can worsen or severely damage a patient.

The public needs to be able to make an informed choice. Currently, one has no way of knowing how much training the practitioner has. There needs to be a designation for those practising and advertising themselves as an acupuncturist, a tuina massage therapist, and also a doctor of Chinese medicine. In this important category, the thoroughness of training varies widely in this country. Toronto boasts one of the finest schools in Canada, the Toronto School of Traditional Chinese Medicine, which I'm associated with, where candidates complete 5,000 hours and pass exhaustive examinations to qualify.

The public also deserves the assurance of quality TCM care, and I hope this bill will address that. Qualifications and education need to be regulated and a mechanism put in place to ensure this is maintained. The new act must control TCM diagnosis, prescribing and dispensing of Chinese medicine, and also acupuncture and tuina massage, a separate modality of TCM which can be used alone or in combination with other treatments.

In my view, there should be a respect for the integrity and philosophy of traditional Chinese medicine so that it can take its place as complementary and equal to mainstream medicine. Each has its place, and TCM brings to the health care system a long and proven history as a valuable healing modality. Attention should be given to the equality of both medical doctors and doctors of traditional Chinese medicine as health care professionals.

I congratulate the Ontario government for addressing this important and much-needed legislation. Thanks for giving me the opportunity.

The Chair: Thank you, Ms. Tyrrell. There are about two minutes per side.

Mr. Patten: Thank you very much. I enjoyed your presentation. I agree with you entirely about the complementarity of the discipline.

I have a personal question out of curiosity. I've noticed the growth of osteoporosis in our society and I have some of my own theories as to why that's true, particularly related to our diet—drinking too much pop and things of that nature. Did you find, through your treatment, that—did you get bone tests? If you had fewer bone breaks, did that mean your bones were in fact increasing in volume, stayed the same or were stronger?

Ms. Tyrrell: Yes, I have. They're not getting any worse, and they had been on a steady decline.

Mr. Patten: Right. Was it through herbs, was it dietary or was it through acupuncture?

Ms. Tyrrell: Well, it's through all of that.

Mr. Patten: Through all of that.

Ms. Tyrrell: Yes.

Mr. Patten: No secrets, eh? I'm just kidding. I'm curious because, as you know, it's a widespread medical condition that seems to be growing in North America and western Europe.

Dr. Kular, did you have a question?

Mr. Kular: Thank you for your presentation. As you know, I'm glad that you have been a registered nurse before. I'm a physician registered with the College of Physicians and Surgeons. I want to thank you for supporting this bill. I agree that this bill will keep the safety of Ontarians at the forefront when bringing traditional Chinese medicine under a college which will set standards and keep Ontarians safe.

The Chair: Mrs. Witmer.

Mrs. Witmer: Thank you very much for coming here today and telling your personal story of how you've been a beneficiary of TCM. I certainly wish you continued good health.

Ms. Tyrrell: Thank you.

The Chair: Thank you, Mrs. Witmer, and thank you as well, Ms. Tyrrell, for your deputation and presence at this committee.

If there's no further business, this committee stands recessed till 3:30 today in this room.

The committee recessed from 1204 to 1530.

The Chair: Ladies and gentlemen, colleagues, I'd like to reconvene the standing committee on social policy. As you know, we're here deliberating our final afternoon of hearings on Bill 50, An Act respecting the regulation of the profession of traditional Chinese medicine etc.

ACUPUNCTURE COUNCIL OF ONTARIO

The Chair: I would now begin by inviting our first presenter of the afternoon, Mr. Kwong Chiu, representing the Acupuncture Council of Ontario. Please be seated. To you and to all members here, the protocol is 10 minutes in which to make your presentation, and if there's any time remaining within that 10 minutes, it will be

distributed evenly amongst the various parties for questions and comments. Mr. Chiu, I invite you to begin now.

Dr. Kwong Chiu: Thank you. My name is Kwong Chiu. I'm the president of the Acupuncture Council of Ontario. This is an association that represents chiropractors who practise acupuncture.

I'm here to speak in support of Bill 50. It's a fair proposal and consistent with the Regulated Health Professions Act in terms of sharing controlled acts. I would like to speak specifically on the matter of acupuncture. Bill 50 makes valuable treatments such as acupuncture accessible to most Ontarians. Regulated health professionals, such as medical doctors, chiropractors and physiotherapists, who currently provide acupuncture and have been doing so for approximately 30 years must be allowed to continue to practise acupuncture as set out in Bill 50.

I have been involved in the process of attempting to regulate acupuncture in Ontario since 1995, and I'm sure that no government intends to open up the practice of acupuncture to all of the 23 regulated health professions of the RHPA. This is a distortion of the facts by opponents of this bill. I agree that Bill 50 must be made more specific to show which professions are included.

Many of our members practise in small communities with no hospitals or rehab facilities and certainly no traditional Chinese medicine practitioners. So by taking acupuncture away from chiropractors, you not only prevent well-utilized primary health providers from continuing to do effective treatment, you also restrict patient access to treatments.

Chiropractors have a long history of providing safe acupuncture treatments in Ontario. Chiropractors were among the first regulated health professionals to practise and introduce acupuncture treatment in North America, to the extent that in some US jurisdictions acupuncture is regulated under acts relating to chiropractors. This fact has been documented in previous HPRAC committee reports.

In 1996, the Canadian Memorial Chiropractic College started to teach acupuncture through its continuing education division to offer chiropractors a clinical acupuncture program that exceeds the World Health Organization standards for physicians.

Many Ontarians prefer to receive their acupuncture treatments in more Western, clinical settings, such as MD, DC and PT offices, thus offering Ontarians freedom of choice of practitioners.

In response to the growing number of chiropractors who practise acupuncture in Ontario, the Ontario Chiropractic Association formed the Acupuncture Council of Ontario to serve as an accrediting body to ensure a minimum standard of training has been met.

The Canadian Chiropractic Protective Association provides qualified members with professional liability insurance for needle acupuncture, thus protecting the patients and the practitioners in the event of an accident.

The College of Chiropractors of Ontario is willing to regulate its members who wish to practise acupuncture

and has already formulated a draft standard of practice in acupuncture for chiropractors. This draft was read in the Ontario Legislature on September 27 by MPP Shelley Martel, the NDP critic for health and long-term care, as an example of a good standard.

These measures show that the chiropractic profession is responsible enough to continue to practise acupuncture as a self-regulated health profession, as outlined in Bill 50.

Thank you for this opportunity to express our opinions and concerns.

The Chair: Thank you, Mr. Chiu. We'll have about two minutes per side, beginning with Mr. O'Toole of the PC Party.

Mr. John O'Toole (Durham): Thank you very much for your position with respect to the role of the chiropractor administering acupuncture. Indeed, I've had two specific calls to my office with respect to the outcome of this bill and how it would affect their ability to continue to administer acupuncture as well as chiropractic procedures. Could you answer that?

Dr. Chiu: I'm not sure of the question.

Mr. O'Toole: Can a person who is a chiropractor and also qualified to administer acupuncture, after Bill 150 is passed—because it will pass; they're the government. What will be the status of both of those procedures?

Dr. Chiu: I think it would be considered almost a controlled act, or they can be qualified—they can do further studies, comprehensive studies—and be a dual registrant.

Mr. O'Toole: But if the bill passes as it is today, would it affect their ability to administer it?

Dr. Chiu: I think the bill, if it's passed, will maintain the status quo, because chiropractors are currently practising acupuncture and are unofficially regulated.

Mr. O'Toole: I just wanted it on the record from you. That was my understanding. But I wondered if that was being drawn into question in your presentation, whether or not this bill will result in limiting in any way current practices by chiropractors or persons administering acupuncture.

Dr. Chiu: No, I see it as just ensuring the status quo.

Mr. O'Toole: Good. The other question would be—in fact, I would be on the record as being supportive—that you're aware the current government delisted fee-for-service OHIP coverage for chiropractic care and physiotherapy.

Dr. Chiu: I'm aware of that. That's financial as opposed to health care.

Mr. O'Toole: Yes. Well, a couple of things: Today, if you read the paper, they're in trouble with their administering of the pharmaceutical bill, Bill 102, which they're—

The Chair: Mr. O'Toole, with respect, I need to offer the floor now to Ms. Martel of the NDP.

Ms. Martel: Thank you for your presentation. I did use the standard of practice for chiropractors in the Legislature, particularly because it recommended the use of the WHO guidelines. I also, though, have raised concerns about section 18, because my read of that particular

section is that the 23 regulated health professions would be able to provide acupuncture. I have tried, on more than one occasion during the course of the hearing, to get clarification of that section to clearly understand if it is the intention of the government to allow all of these professions to practise acupuncture and, if it is not, what restrictions are going to be there. As I look at scope of practice and standard of practice, I find it impossible as a consumer to determine which profession is allowed to practise acupuncture under that section. So we'll continue to try and get a clearer answer from the government on that.

With respect to who continues to practise, I've also argued that there should be some minimum standards across professions for those who are practising acupuncture. I just want to know if you have a sense of whether or not that would be appropriate or whether or not that would make sense.

Dr. Chiu: That would be appropriate. Everyone's using the WHO standards for physicians. In terms of non-comprehensively trained acupuncturists, everyone's using the 200 hours of training for regulated health professionals.

Ms. Martel: It's clear in your guidelines. It's not so clear in everybody's guidelines.

Dr. Chiu: Yes, I said that I think Bill 50 is a good starting place. I know that it has room to be more specific, but it's a good starting place, in my opinion.

The Chair: To the government side.

Mr. Patten: Thank you for your presentation. The standard that is recommended: Are individual practitioners required to meet that standard in order to practise or can they practise anyway and work at reaching the standard? Which is it?

Dr. Chiu: At present, it's in the public domain, as you realize, and anyone can practise acupuncture. That's why this bill is important, because once the bill is passed, the respective college would set the standard and any member of the college would have to acquire that standard before they could practise, or else they would be disciplined by their respective board. That's already outlined in the proposed standard from the CCO.

Mr. Patten: What has been the record of your profession in terms of complaints by people on the use or adjunct use of acupuncture therapies?

1540

Dr. Chiu: To my knowledge, no good study has been done to investigate complaints in acupuncture and who they were made by. As far as I know, chiropractors have had a very good record in providing acupuncture.

The Chair: Thank you, Mr. Chiu, for your presentation on behalf of the Acupuncture Council of Ontario.

INSTITUTE OF ACUPUNCTURE AND TRADITIONAL CHINESE MEDICINE

The Chair: I invite our next presenter, Joanne Pritchard-Sobhani, the director of the Institute of

Acupuncture and Traditional Chinese Medicine. Ms. Pritchard-Sobhani, I remind you that you have 10 minutes in which to make your combined presentation. Please begin now.

Dr. Joanne Pritchard-Sobhani: Good afternoon, everyone. I am Joanne Pritchard-Sobhani, director of the Institute of Acupuncture and Traditional Chinese Medicine, and I practise as a doctor of TCM in Brockville. I have been involved with regulations since 1994 and was appointed to the TCM advisory council by the previous Minister of Health, with Professor Cedric Cheung and Dr. Rapson. We appreciate the efforts of Minister Smitherman and his staff in their determination and commitment to regulate TCM, and obviously support Bill 50.

The statement that there has not been enough dialogue is actually insulting to those who have worked so hard in the consultation process, which has included everyone. In fact, the TCM minority group, as listed by Elizabeth Witmer—which I'm not upset that Elizabeth had to list, of course—were also involved in the previous meetings and all of the hearings and also sat on the TCM advisory board. Unfortunately, they attempted to disrupt the process then, and have continued to do so. As a matter of public record, the issues have been debated since 1994 in which this particular group has participated, often reorganizing themselves by creating new associations under new and different names. There can be no consensus achieved because it would mean literally compromising the entire legislative process, which cannot offer sole, exclusive rights to our profession by excluding other regulated practitioners. To date, there is no evidence to suggest those regulated professions that have practised acupuncture as an adjunct since the 1970s place the public at risk.

We stand on principle in supporting Bill 50 and would vigorously object to major amendments to the act now that require a referral back to HPRAC. This would mean further delays, and we are really not prepared to risk the opportunity to have this profession regulated.

The statement that says that the bill provides for a multitude of professionals to perform the service, each with different standards that place the public at risk, is misleading to the public and does so in a way that undermines the entire legislative process, the integrity of the individuals involved in creating this bill, and inherently serves to protect the vested interest of those individuals who want to maintain the status quo, which has very little to do with public protection. Let me assure you, it's absolute corruption.

What needs to be stated as a matter of reference is that in China, various professionals, including Western-trained doctors, TCM doctors, TCM-combined Western doctors and nurses, perform acupuncture. I have studied at Shanghai Medical University and had the opportunity to practise at HuaShan and Longhua Hospitals. I witnessed both of these in action, and to witness this incredible integrated approach to health care is what inspired me to fight for regulation in Ontario.

To argue against this bill for the purpose of restricting others from practising does not make sense unless the true underlying issue is a cultural one. Unfortunately, this needs to be addressed because Western medicine failed to give access to these Chinese Western-trained doctors who are not Chinese doctors, and they're frustrated. There is no doubt a residual antagonism exists, which has permeated this entire legislative process from start to finish, as a deliberate, defiant act in not sharing scope of practice. This translates into an inherent right of entitlement to control and own their profession because of this antagonism. It has become clear to me over the years that the particular group feel that they've been discriminated against because they are Chinese. However, the marginalization of the TCM profession has had nothing to do with being Chinese, but rather the fact that the profession was not regulated. This is not about being Chinese, and, as a doctor of TCM myself who is obviously not Chinese, we need to be clear that we're regulating TCM as a coherent, independent, comprehensive medical system and not the Chinese community.

Personally, my patients of over 3,000, my staff and myself, take exception to the fact that TCM and acupuncture is referenced in a way which signals only that the Chinese community wants regulation. This, in fact, reinforces the belief you must be Chinese to practise TCM and acupuncture. There's a much larger community that extends beyond Toronto, like eastern Ontario. The people of Ontario who seek our services need to know that they have the freedom to choose the health care they deserve from competent people and not premised on such obscure beliefs.

Bill 50 offers the TCM profession the respect it deserves and does so by offering title protection. Bill 50 is consistent with shared scope of practice under the RHPA and, that said, it does not mean that anyone will be able to practise acupuncture because the limits, as I understand it, within the existing framework of the profession's specific scope of practice define each of their professions in the same way as our TCM profession will in the future.

If Bill 50 passes, it is assumed that each of those colleges, including chiropractic, if relevant to their current scope of practice now, will have to make application to the ministry to include acupuncture in their scope of practice. Pharmacists, for example, would not have such a provision in their scope of practice because it's not relevant.

The critics opposing Bill 50 have outlined that a minimum standard must be written into the act for regulated professionals. Yes, our institute endorses the belief that regulated practitioners should practise within their scope of practice, and how to safeguard minimum standards is a relevant question. There are two options to consider. The first involves whether minimum standards should be written directly into the act or, secondly, by amendment, which may include that all other regulatory colleges need to develop trans-regulatory agreements with the TCM college that safeguard minimum standards. Our institute

endorses the World Health Organization's recommended basic training of 220 hours for regulated professions, which has been consistently applied around the world.

However, Bill 50 is an act to regulate TCM and not regulated professions. It has been assumed that each respective college, in making application to the minister, would be required to have this provision, and yet such an assumption could have serious consequences if minimum standards were not acknowledged as being necessary.

If the critics legitimately believe that Bill 50 places the public at risk and is not an intent to delay the regulatory process, then this review today will ensure that some of those amendments will be made. Once Bill 50 is passed, then the college of TCM, within its mandate, as stated under the explanatory note, can address the issues identified by some of the TCM profession. This is the appropriate place.

Bill 50 is designed to offer our profession regulation, being general in nature, without major obstacles, so that in a unified, coherent and ethical manner, the best possible legislation would evolve. Wouldn't that be something? A point to understand is that if a legislative framework such as Bill 50 does not explicitly state something, it does not mean that our concern has been overlooked, like grandfathering. These are scare tactics. We're quite tired of it, in fact. Thank God for these hearings today because this has to be disruptive. However, given the concerns of our members, we certainly need and want the ministry to know that this is an important issue and trust that the minister will address it appropriately, either in the legislation or in the regs.

Our institute firmly endorses the belief that acupuncture should be reserved as a controlled act under the RHPA and reserved to those authorized to practise as per HPRAC's recommendation. It is an invasive procedure that, if not recognized as a controlled act and licensed to only those qualified to perform such a procedure—it is possible that these unscrupulous organizations, which we have witnessed, or emerging professions may attempt to boycott and manipulate the professions in order to corrupt the legislation. That said, I make this recommendations with some reservations, though, because the protection of the public is our ultimate priority, not in vested interests, not in millions of dollars under the table.

It should be noted that even if all the amendments are made as suggested by the critics against Bill 50, this standing committee needs to know that some of these individuals will continue to thwart Bill 50 and regulation, simply because it does not endorse a policy of exclusivity, power, control and corruption. In fact, some will boycott membership in the new college, reinventing themselves, as they have in the past, redefining their services to avoid culpability. Historically, this regulatory process has been plagued by this corruption and discrimination endemic to a particular interest group biased in favour of this exclusionary policy. The history of this conflict is a matter of public record at both the provincial and federal levels of government. Bill 50, thank God, finally protects the public and students from

the continued victimization in which this profession will finally be held accountable. Thank you.

The Chair: Thank you, Ms. Pritchard-Sobhani. We just have a handful of seconds, colleagues, so to the government side. Mr. Ramal, 20 seconds.

Mr. Ramal: Thank you for your presentation. I hear you very well. Many people came before you and spoke about the bill and about exclusion. I agree with you fully. You don't have to be Chinese to practise Chinese medicine. You can study it. There's no doubt about it.

You mentioned the pharmacists many times. This bill mentions the pharmacists. It's not in their scope of practice that they use acupuncture; therefore, they're not going to do it—

The Chair: Thank you, Mr. Ramal. With respect, to the PC side, Ms. Witmer.

1550

Mrs. Witmer: Thank you very much for your presentation. I hope that you would appreciate that when any piece of legislation is introduced into the Legislature, we have an obligation, all three parties in the House, to make sure that the voices of everybody in the province of Ontario are heard. That's why we're having these public hearings. At the end of the day, we're able to judge the input that we've received from yesterday and today and written submissions, and then move forward and make our decisions as to whether or not we could support the bill as it's presently written. But this is a very important process, and whether we agree or disagree with people who are coming before us, we do live in a democracy and they do have the opportunity to appear before us—

The Chair: Thank you, Ms. Witmer. With respect, to Ms. Martel.

Ms. Martel: Thank you for your presentation. I want to focus on minimum standards. You said—two options: (1) write the minimum standards directly into the act, or (2) by amendment with arrangements with the college. What is your preference?

Dr. Pritchard-Sobhani: Actually, my preference is probably to have it written into the act. In the United Kingdom, they did write it into the act and the reason for that is because of the conflict. If we had better relationships and good relationships with other regulated practitioners, I believe that would be the best thing to do. But we don't, and we've seen it happen with midwives; we've seen it across these trends. Regulatory agreements happen; it works very well—maybe down the road.

Ms. Martel: So write it into the act and use the WHO guidelines? Okay.

The Chair: Thank you, Ms. Martel, and thank you, with respect to you as well, Ms. Pritchard-Sobhani, for your deputation and presentation on behalf of the Institute of Acupuncture and Traditional Chinese Medicine.

ONTARIO CHIROPRACTIC ASSOCIATION

The Chair: We now move directly to our next presenter, Mr. Bob Haig, executive director of the Ontario Chiropractic Association. Mr. Haig, as you've seen, you

have 10 minutes in which to make a presentation. Please begin.

Dr. Bob Haig: Thank you very much. Mr. Chair, ladies and gentlemen, the Ontario Chiropractic Association appreciates the opportunity to comment on Bill 50. It's particularly with respect to the regulation of acupuncture that chiropractors and their patients are concerned. There are tens of thousands of patients in Ontario who depend on acupuncture services that they receive from their chiropractor. In some rural and northern communities, the chiropractor is in fact the only person who can provide acupuncture services—the only one there.

Ontario chiropractors receive their acupuncture training postgraduate from a variety of sources. These are primarily through the Canadian Memorial Chiropractic College in conjunction with the Acupuncture Council of Ontario, through the contemporary medicine acupuncture program at McMaster University and through the Acupuncture Foundation of Canada. In all of those circumstances, the training meets the guidelines on basic safety in training in acupuncture established by the World Health Organization. We believe that those World Health Organization guidelines should form the basis for standards of practice for chiropractors and for other professionals in Ontario. There has been reference to the draft standard of practice from the College of Chiropractors of Ontario, and I know that you heard from them this morning.

Ontario chiropractors in the Ontario Chiropractic Association support Bill 50 as it's drafted. We believe that it will appropriately regulate acupuncture by restricting its use to regulated health professions. The bill would restrict the title "acupuncturist" to members of the college of TCM, but would permit the practice of acupuncture by members of other appropriate colleges. We think that's a reasonable resolution to the many diverse points of view that you're hearing about. We've followed the debate in the House, where there has been suggestion that permitting any regulated health profession or all regulated health professions to perform acupuncture is too broad. We believe that the RHPA and the profession-specific acts are an appropriate structure for self-regulation and that the regulatory bodies can and will develop appropriate standards. We believe that you can rely on the colleges to determine if acupuncture might or should be utilized by the members within their scope of practice and, if so, to develop appropriate standards of practice. However, if acupuncture is to be limited to certain professions in legislation rather than by the colleges themselves, then obviously chiropractic must be one of those professions.

Bill 50 essentially provides for acupuncture by exemption from the controlled act. There have been suggestions in the House and at these committee hearings that, rather than being dealt with by exemption, acupuncture should be a controlled act. I don't need to remind you that controlled acts are those procedures which have an inherent risk of harm, and for acupunc-

ture, that risk exists whether it's done by a physician, a TCM practitioner, a chiropractor or somebody else. So if acupuncture is to become a controlled act, then it must be authorized to all those professions who perform acupuncture, and that obviously includes chiropractic. It may be that the authorization of the controlled act could be dependent on the development of appropriate standards of practice. That's something you may want to consider.

There have been suggestions that any controlled act of acupuncture should be limited to TCM practitioners and that the procedure, when performed by another regulated health profession, should be something else other than the controlled act. That's a false distinction and it would mean that the RHPA was not being used as it was intended, to protect the public from harm, but was in fact being used for a turf battle among professions. I think you would want to avoid that at all costs.

I'm going to stop at this point and leave time for questions.

The Chair: Thank you, Mr. Haig. A generous amount of time, about two minutes per side, beginning with Ms. Witmer.

Mrs. Witmer: Thank you very much, Dr. Haig, for your presentation. I'm really quite impressed with everything that has been done by the college, and certainly, as you've indicated, you support what the college has undertaken in the work they've done in supporting minimum standards. But you mention here—where was it now? Would you just expand on number 6 here, "should be limited to TCM practitioners"?

Dr. Haig: I've heard the suggestion, as you have, that acupuncture should be limited to TCM practitioners because it is an inherent part of and can only be part of traditional Chinese medicine. What the World Health Organization guidelines clearly say is that it is an appropriate therapy for people who are not TCM practitioners to incorporate into modern Western medicine. All I'm saying is that if there is a controlled act, it is just as applicable to a practitioner using it as part of Western medicine as it is to a TCM practitioner.

Mrs. Witmer: Thank you very much. Certainly, I applaud the chiropractors and the college for the work they've done.

Ms. Martel: Thank you for your presentation today. Let me deal with number 4 first, because I have been one of the people who have raised concerns in the Legislature and during the course of the hearings about section 18. It is not clear to me if that is a reference to all colleges or if the government has some intentions to limit which regulated health professions provide acupuncture. So if I read you correctly in number 4, at the bottom, your suggestion to us is that we should rely on the colleges themselves to determine if acupuncture might be utilized by their members.

Dr. Haig: I think that is the intent of the RHPA, the way that it's set up, and I think it can work that way, yes.

Ms. Martel: This is not a trick question. If you look at the list of currently regulated health professions, do you think that all of them should be practising acupuncture?

Dr. Haig: That is a trick question.

Ms. Martel: I'm not trying—

Dr. Haig: I don't particularly want to go there. I very much suspect that if I had the list in front of me I would see some for which it probably would not make any sense that acupuncture could be considered a part of their scope of practice when you look at the scope-of-practice statement. For some it does, for some it won't make any sense, and I don't want to pick out which ones it would and wouldn't for.

Ms. Martel: Okay. Earlier, in another presentation, we were told it would be the board of the college—and I don't think I'm misquoting anyone—that would kind of look at that issue and make that determination, if their members had it in their scope of practice and their standards of practice. I guess I'm thinking, if there is a college out there that you wouldn't think would normally be providing acupuncture that decides, "Our members came forward and we want to do this," how do you control at that point who is doing acupuncture and who isn't, if it's coming from the college? Do you see what I'm saying?

Dr. Haig: I understand what you're saying. The college consists of professional members and public members. Their duty is to look at—

The Chair: Mr. Haig, with respect—thank you, Ms. Martel—I'll offer it to the government side.

Mr. Patten: Thank you for your presentation. We've heard from your profession a few times. I would like to underline under point 6, which I believe was raised over there and I think covers part of Ms. Martel's concern, the statement by the World Health Organization. I need not read it. You didn't read it, but I think it would be worth reading and putting into the record, because it is part of the philosophy and the intent of the bill. If I might ask you to read that quote.

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Dr. Haig: The quote from the World Health Organization is that "making use of acupuncture in modern medical care means taking it out of its traditional context and applying it as a therapeutic technique for a limited number of conditions for which it has been shown to be effective, without having to reconcile the underlying theories of modern and traditional medicine. In this type of situation, lengthy periods of instruction in traditional medicine as a background to acupuncture are neither feasible nor necessary, and shorter training must suffice."

Mr. Patten: So it attempts to make a distinction. One of the other papers that came this morning from the college was using the term "adjunct" therapy, which is a descriptive term—adjunct acupuncture. In other words, you're not applying the full range of all of the tremendous training that is required to be recognized as a full acupuncturist, but what you are doing is limiting it to your scope of practice. It's quite well defined, it's within that particular context, and it's in a very limited fashion. It is utilized to enhance and improve and add to the effectiveness of the particular practice of which you are a member. Would you agree with that?

Dr. Haig: Yes. There are certain chiropractors who are fully qualified TCM practitioners, but there are also chiropractors who utilize acupuncture as one of a number of types of interventions.

Mr. Patten: Thank you very much.

The Chair: Thank you, Mr. Patten, and thank you as well, Dr. Haig, for your presentation on behalf of the Ontario Chiropractic Association.

ACUPUNCTURE FOUNDATION OF CANADA INSTITUTE

The Chair: I now invite Dr. Linda Rapson, executive vice-president of the Acupuncture Foundation of Canada Institute. Dr. Rapson, as you've seen, you have 10 minutes in which to make your presentation. I invite you to begin now.

Dr. Linda Rapson: Mr. Chair, honourable members, thank you for the opportunity to speak to this important issue today. My name is Linda Rapson. I'm a medical doctor. I graduated from across the street at U of T back in 1965, so I've been practising for a long time. The Acupuncture Foundation of Canada Institute has been teaching since 1974. I will be describing as I go along a little bit of the philosophy that's involved in that. I've been involved in the attempt to regulate traditional Chinese medicine and acupuncture for a long time, initially with the Ontario Coalition for the Regulation of Acupuncture. We were trying at that point to have acupuncture regulated, thinking that it would make more sense for TCM to come later.

Over the years, the Acupuncture Foundation of Canada Institute has submitted many documents to HPRAC and the Ministry of Health putting forth our position on the regulation of TCM and acupuncture. We remain strongly in favour of the establishment of a self-regulating college of TCM and acupuncture practitioners of Ontario under the umbrella of the RHPA, and congratulate Minister Smitherman for bringing Bill 50 forward.

Unfortunately, at a news conference prior to second reading and repeatedly during debate in the Legislature, questions were raised about the potential harm to which Ontarians would be subjected if the bill passes in its present form. These concerns were raised by a small group of TCM practitioners and widely reported in the media, probably right across the country via the wire services. It is to this issue that I wish to address my remarks today in the few minutes allotted to me.

The history of acupuncture practice in Ontario must surely go back to the arrival of the first Chinese immigrants to Toronto. It would be naive to think that there were not some among them who brought acupuncture to their community, where it was no doubt used for years before Richard Nixon's famous trip to China in the early 1970s that brought this wonderful aspect of TCM to the wider world.

I began my training in acupuncture in 1974, when the Acupuncture Foundation of Canada started its courses for

physicians. At that time, there were very few unregulated practitioners of acupuncture who practised openly. Without going into the details of the history of that early era, suffice it to say that there are medical doctors and dentists in this province who began their acupuncture training and experience that long ago.

In 1982, the foundation began to teach physiotherapists to use acupuncture within their scope of practice, later adding chiropractors in 1996 and baccalaureate nurses, naturopathic doctors and regulated acupuncturists who are licensed in jurisdictions where there is regulation. This would include BC, Alberta, Quebec and the USA. Chiropractors had been learning acupuncture, as you've heard, either abroad or in other courses for many years before AFCI began teaching them.

Needless to say, the widespread exposure of the Canadian populace to acupuncture through the use of adjunctive acupuncture by regulated health practitioners over so many years made the introduction of traditional Chinese medicine into our Canadian culture easier than it might otherwise have been. I strongly believe that those of us who embraced acupuncture so many years ago have been goodwill ambassadors for our TCM colleagues who came to Canada in large numbers, particularly to Ontario, over the past 15 years or so.

The experience in this province of citizens receiving acupuncture treatment from those of us whom some TCM practitioners declare to be dangerous and incompetent is vast, spanning 32 years in my particular case. Our track record in dealing with all sorts of cases, but particularly chronic pains, is excellent, and there is no evidence of harm coming to the population over these many years. If there were evidence that we are a danger to the public, those who state these lies would surely have brought it forth. They have not, because there is no such evidence. In fact, the best-known case of complications from acupuncture in Ontario due to contaminated needles was perpetrated by an acupuncturist who was trained and licensed in the province of Quebec.

On the positive side, and as an example of the safety and effectiveness of what we teach, in-patients with spinal cord injury pain have benefited for the past 14 years from treatment administered to them by physiotherapists trained by AFCI. This has taken place in several spinal cord rehab units in Toronto, London and Ottawa. Those individuals would not have benefited from that treatment at all without the physiotherapists having been the deliverers of the service, since the services of unregulated practitioners could not be incorporated into the hospitals.

At Lyndhurst Centre, the spinal cord rehab hospital to which I am consultant on acupuncture, we have had absolutely no complications since 1992, apart from one person who fainted and recovered without incident. That record includes several thousand treatments, and our success rate is approximately 80% with spinal cord injury pain.

When TCM and acupuncture are regulated, I personally will advocate for the inclusion of TCM in hos-

pital settings where there is the potential to improve outcomes and patient care. The benefits to the public that will accrue are potentially huge. I believe that the health of Ontarians will be improved, and costs reduced by the regulation of TCM and acupuncture. The strength of the system will be many times greater when there is harmony and co-operation among those who deliver the service.

That's what I have to say. What I've provided you with is a little summary of places in the community in Ontario where acupuncture has been used both by regulated and unregulated professionals.

The Chair: Thank you, Dr. Rapson. A minute per side, beginning with the NDP.

Ms. Martel: In an earlier presentation from the Institute of Acupuncture and Traditional Chinese Medicine, Ms. Pritchard-Sobhani said that she agreed there should be a minimum standard and suggested, and it might not have been picked up on the record, that the WHO guidelines might be the most appropriate as a minimum standard. Do you have a view about that?

Dr. Rapson: I think that's reasonable. The problem is that we have no say in terms of forcing our students to complete the whole program, as it were. That's up to the colleges, and that's what they're going to have to do now, once this bill goes through. I'm confident that they'll come up with a standard that's very workable and very reasonable.

Ms. Martel: That could be a minimum standard, those guidelines. For those colleges that are going to have members who provide acupuncture, would that be a reasonable standard that they should hold their members to, in terms of what their expectations are if the members are going to provide acupuncture?

Dr. Rapson: This is a very complicated issue, particularly because of the way we teach acupuncture. Our students, because they come to us pretrained—

The Chair: With respect, Dr. Rapson, I will have to offer it now to the government.

Mr. Kular: Dr. Rapson, I really want to congratulate you for appearing before this committee. Thank you for supporting this bill. I agree with you that it's a win-win situation for Ontarians. It's keeping Ontarians' safety at first hand, and definitely this new college, after this bill is passed, will make sure the standards of traditional Chinese medicine and acupuncture are held high.

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The Chair: Thank you, Dr. Kular. To the PC side.

Mrs. Witmer: Thank you very much, Dr. Rapson. How many students would you train each year at the institute?

Dr. Rapson: I don't know the exact number. It's hundreds. Our current paid-up membership is about 1,400 across the whole country. About 600 of them are in Ontario. But our courses range from large to small: Some of them have 100 students; some of them have 20. I'm sorry, I don't have that number in my head.

Mrs. Witmer: You indicated that you've been training the doctors and the dentists, the chiropractors and massage therapists.

Dr. Rapson: No. We don't train massage therapists.

Mrs. Witmer: You don't do them. Okay. Any other—

Dr. Rapson: We train nurses with a baccalaureate. One of the main preconditions is the amount of anatomy and physiology that they have, because we literally incorporate acupuncture into a Western diagnosis, and it's very important that they be able to make that diagnosis. We're very strong on anatomy when it comes to safe placement of needles.

The Chair: Thank you, Mrs. Witmer. Thanks to you as well, Dr. Rapson, for your deputation on behalf of the Acupuncture Foundation of Canada Institute.

CANADIAN MEMORIAL CHIROPRACTIC COLLEGE

The Chair: I'll now invite our next presenter, Jean Moss, president of the Canadian Memorial Chiropractic College. Dr. Moss, please be seated. As you've seen, you have 10 minutes, which begin now.

Dr. Jean Moss: Thank you. The Canadian Memorial Chiropractic College is also known as CMCC. It is a private, not-for-profit charitable academic institution which has been providing post-secondary professional education to chiropractors since 1945. We're a leader in chiropractic health research and we've partnered with many other academic health sciences institutions in the development of interprofessional care and education. We offer the only English-speaking chiropractic program in Canada and we have educated more than one half of the chiropractors licensed to practise in Canada.

We support Bill 50, the Traditional Chinese Medicine Act, which will make TCM treatments such as acupuncture accessible to most Ontarians under the regulations set forth by the Regulated Health Professions Act, and consistent with regulations for other regulated health care providers who are authorized to perform acupuncture. Chiropractors should be included among the regulated health professions who, with appropriate training, can utilize acupuncture in their care of Ontarians.

Chiropractic is one of the largest primary contact health care professions in North America. In an average year, approximately 4.5 million Canadians are treated by chiropractors for neuromusculoskeletal conditions primarily related to headache, neck pain and back pain. Acupuncture is a recognized method of treatment for neuromusculoskeletal disorders.

Chiropractic is one of the regulated health professions currently permitted to provide acupuncture treatments, along with medical doctors and physiotherapists. These regulated health professions have been competently providing acupuncture treatments for their patients for over 30 years. We are pleased to see that under the proposed act, they will be able to continue to do so. Chiropractors are well educated and were among the first health professionals to recognize the importance of acupuncture and to introduce it to North America.

CMCC has offered a clinical acupuncture program that exceeds the standards set by the World Health

Organization in 1999. We've offered that program through our continuing education division since 1996. The program consists of 288 contact hours. It is designed for fourth-year chiropractic students and regulated health care professionals such as physicians, nurses, physical therapists and obviously chiropractors.

Appropriately trained chiropractors are well placed in communities throughout Ontario. They provide acupuncture treatments to their patients. In many cases, they provide the only access to acupuncture treatments within their communities. Any reduction or removal of acupuncture from the scope of practice of chiropractors will have significant impact on patient access to an effective treatment choice and to their choice of practitioner.

In order to ensure that the general public is protected from harm, regulated health professionals entitled to use the term "doctor" are limited. Under current legislation, only chiropractors, dentists, medical doctors, optometrists and psychologists may use the title. All of these professions require a minimum of seven years of university-level post-secondary education. The depth of education incurred during these years ensures that the graduate has the theoretical and practical knowledge to undertake the diagnosis of conditions, both within their scope and outside of their scope, in order to treat or to make inter-professional referrals in the best interests of patient care.

Consistent with other regulated health professions granted the authority and privilege to use the doctor title, only those members of the proposed College of Traditional Chinese Medicine Practitioners of Ontario who have the equivalent of seven years of university-level post-secondary education in a fully accredited program and who have been educated with a strong basis in biological and clinical sciences—for example, anatomy, physiology, pathology—and are equivalent in the training of other regulated health professions should be allowed to use the title "doctor."

In conclusion, we support the Traditional Chinese Medicine Act, as currently proposed, because in addition to providing a regulatory structure for TCM, it will ensure that regulated health professionals currently providing acupuncture services to their patients will be able to continue to do so, as they have done for over 30 years. Chiropractors, who take advanced training in acupuncture, are well trained to provide this care.

As we have said, it is important that the legislation be clear that the right to use the title "doctor" is a privilege, which must meet the same exacting standards as applied to the other regulated professions with this right. It is imperative that the general public be assured that those who carry this title are appropriately educated.

Thank you for the opportunity to present this afternoon. I am happy to respond to any questions.

The Chair: Thank you, Ms. Moss. We have about a minute or so per side, beginning with Dr. Kular of the government.

Mr. Kular: Thank you, Ms. Moss, for your presentation and thank you for your support for this bill. As you

have said in your presentation, you fully agree with this bill. The question I have is, would you suggest anything to make any improvements over the present bill?

Dr. Moss: Our main objective is to ensure that chiropractors are allowed to continue to use acupuncture; if it's a controlled act, that they have access to that controlled act. With regard to the actual regulation of TCM, I don't really feel that I'm qualified to comment on that.

The Chair: Thank you, Dr. Kular. If there are no further questions from the government side, we'll move to the PC side.

Mrs. Witmer: Thank you very much, Dr. Moss, for your presentation. It's well done and I think it speaks to all the points that need to be put on the table. You do spend some time taking a look at the privilege of using the "doctor" title. Do you have some concerns that perhaps within the legislation there's a possibility that that might be used by people who maybe don't have equal educational status?

Dr. Moss: Certainly, with the status of education within TCM right now, there are enormous variations in the level of education, and this is a concern of ours. We're concerned that the programs be fully accredited and that those who are allowed to use the title be fully educated in order to be able to do that. I think the difficulty is the range of education that currently exists within TCM. It's very early in their development. We'd like to see that that's developed appropriately.

Mrs. Witmer: Thank you very much. It's a great presentation.

The Chair: Thank you, Mrs. Witmer. To Ms. Martel of the NDP.

Ms. Martel: Thank you for your presentation. You said your main concern was, if acupuncture was a controlled act, that chiropractors have access to it. The legislation as it currently stands doesn't use "a controlled act"—

Dr. Moss: I realize that.

Ms. Martel: There are two ways to do this. You could do it through a controlled act—and I've asked the ministry for some explanation about that—or you can do it the way the ministry has proposed, which is to allow the colleges, on their own, through their scope of practice and standard of practice, to determine if they should do acupuncture and then set the standard for that. Do you have a preference?

Dr. Moss: Well, inserting anything below the dermis is a controlled act, so I think you get into a very grey area where that's considered—for example, if you were to withdraw blood or something like that, that's a controlled act. When you're inserting needles, that also inserts a needle below the dermis, and I think you're getting into an area where there is some conflict, with one as a controlled act and one not as a controlled act. Preferably, I think that acupuncture has the potential to harm, and therefore it should be a controlled act.

The Chair: Thank you, Ms. Moss, for your deputation on behalf of the Canadian Memorial Chiropractic College.

1620

THE WORLD TUNG'S ACUPUNCTURE ASSOCIATION

The Chair: I would now invite our next presenter, Mr. Palden Carson, for the World Tung's Acupuncture Association. Mr. Carson, as you've seen, you have 10 minutes, and I invite you to begin now.

Dr. Palden Carson: Good afternoon. I'll just present my papers.

Our organization, the World Tung's Acupuncture Association, is the only international acupuncture association that has been established and based in this province of Canada by three medically qualified doctors from different countries. The three also trained with ancient master-disciples traditions before 1973. Our Tung's orthodox acupuncture is a unique style of old Chinese acupuncture, which is lost in the People's Republic of China's mainland.

We, as experts in traditional acupuncture, teach Tung's orthodox acupuncture in Asia, Europe and North America, including the United States, to those trained medical doctors, Chinese medical doctors and licensed acupuncturists. Therefore, Tung's orthodox acupuncture is a more postgraduate kind of advanced acupuncture. In South Korea alone, there are more than 1,000 registered Tung's acupuncture practitioners. In the past, we have advised the last Conservative government, as well as the present one, on the possibility to regulate acupuncture and Chinese herb medicines.

We think that the present government may have made some initial good intentions or promises to its supporters to regulate this unfamiliar Eastern medicine, after some insufficient public hearings conducted by its party's members; plus some misinformation about this existing professional community was given to the government policy-makers. Also, a lack of sufficient communication makes this Bill 50 a most unwelcome regulation.

We all know that a good government will listen to its people. We are the citizens and also highly qualified professionals. We would like to give advice to the government on request in due course. However, not a single word has changed since the proposed Bill 50, from the very beginning until the recent second reading. This arrogant attitude of the government makes us worry, not just for our profession but also for the safety of all patients in Ontario. We feel that this government is making a big mistake by using its majority MPPs to support a pro-chaos, unhealthy and society-divided new bill. Although we are very frustrated, but represent most acupuncture practitioners in this province and those experts overseas, we sincerely hope that some committee delegates could accept the following important points to amend the present Bill 50:

(1) Acupuncture must be a profession. Even our neighbouring country has regulated acupuncture for more than 20 years. A proper "doctor" or "physician" title should be given to acupuncture experts, which is separate from Chinese herb doctors. Since TCM practitioners

mainly treat their patients with Chinese herbs, and acupuncture practitioners largely apply needles on their patients, these two professions should be treated as equal.

(2) Acupuncture should be performed by trained acupuncturists, not by chiropractors, naturopaths, massage therapists, dentists or even medical doctors. This is the most problematic part of the present Bill 50. Both the general public and the government must be fully aware of this illogical and dangerous element.

(3) Bill 50 must comply with our Canadian Constitution to recognize our national languages, English and French. In fact, this bill is fundamentally a health issue, not a cultural issue. Canadian health practitioners must be capable of communicating in either English or French with their patients to safeguard against any misdiagnosis or possible wrong treatment. Only in exceptional situations should we consider accepting the Chinese, Japanese or Korean languages for examination purposes, like our neighbouring country, the United States.

(4) A grandfather clause must be included in the original Bill 50, which should not be decided by the future college. Those who have practised five years or more should be automatically grandfathered without further examinations.

(5) The college directors should be elected through democratic procedures by our peers, not appointed. If council members are to be appointed by the Lieutenant Governor, then such appointments should be like those of appointed judges: based on merit, not politics.

The Chair: Thank you. We have about a minute per side, beginning with the PCs. Mr. O'Toole.

Mr. O'Toole: Thank you very much for your presentation. It's also important to point out that we've got the essential argument here—the previous presenters and yours—and the differences are clearly spelled out there. You may have heard them.

In your second recommendation, you suggest that acupuncture not be performed by others as a controlled act or any other function of those medical professionals. Is that right?

Dr. Carson: Yes.

Mr. O'Toole: That's a pretty serious impediment to finding consensus on this bill, because the bill currently does permit that.

Dr. Carson: They're just different views. A few months ago, the American Acupuncture Council came to meet our people and the ministries. They actually said that they had been conducting their bill for more than 25 years. They said that regulating TCM is too ambitious, and even acupuncture—

The Chair: Thank you. With respect, Mr. Carson, I now offer it to the NDP. Ms. Martel.

Ms. Martel: Thank you for your presentation. In (3), you say that the bill must comply with the Constitution and recognize English and French. There have been a number of other presenters who have said that any certification examinations should be in Chinese as well.

Dr. Carson: If we allow Chinese, then we should allow Japanese and Korean, because they are all under

the umbrella of Oriental medicine. That's the reason why in American licensed acupuncture exams, you can ask for Korean or Japanese or Chinese.

Ms. Martel: So you make a specific request?

Dr. Carson: Yes. If they are capable and their qualification is up to the [inaudible], that's the reason why we say it's an exceptional case: They have the knowledge, they have the skills, but maybe their language is a little bit inferior.

The Chair: To the government side: Dr. Kular.

1630

Mr. Kular: Thank you for your presentation. In your presentation, you said: "(2) Acupuncture should be performed by trained acupuncturists, not by chiropractors, naturopaths, massage therapists, dentists or even medical doctors."

I'm a medical doctor turned politician. During my practice, I have gotten assistance from a lot of chiropractors who helped us with doing acupuncture, and our patients, especially those in chronic pain, get helped a lot. So why do you suggest that an MD or a chiropractor should not practise acupuncture? The question I have is, is it the training issues you are worried about, or is it something else which worries you?

Dr. Carson: The thing is, we think acupuncture is just the one standard. If you want to regulate something, there's one standard that has been set there; then, if you qualify, I will call you an acupuncturist. If you're not qualified—

The Chair: Thank you, Dr. Kular, and thank you, Dr. Carson, for your presentation on behalf of the World Tung's Acupuncture Association.

CANADIAN SOCIETY OF CHINESE MEDICINE AND ACUPUNCTURE

The Chair: I would now invite our next presenter, S.Y. Mak, the president of the Canadian Society of Chinese Medicine and Acupuncture. Please be seated. As you've seen, you have 10 minutes in which to make your presentation. I invite you to begin now.

Ms. Helen Zhang: Thank you, Chairman. My name is Helen Zhang. I'm the vice-president of this association. I really appreciate being here to hear all the opinions. Also, I'm very happy to be here because I usually see your faces and am familiar with your names from the TV and newspaper. Today we are face to face.

On behalf of the Canadian Society of Chinese Medicine and Acupuncture, I would like to take this opportunity to re-emphasize that we are in agreement regarding the legislation of Chinese medicine and acupuncture as an independent health care profession. We always give full support to this legislative movement. We are looking forward to having regulation of TCM and acupuncture to protect Ontarians and the practitioners.

We stand firmly on the following three principles. First, we believe that acupuncture is an imperative and inseparable part of TCM. In China, acupuncture is a respected career; an acupuncturist works at the acupuncture

department in the hospital. There are master's degree- and Ph.D. degree-studies in the medical universities.

Because acupuncture is an effective treatment—simple, cheap, quick and convenient—it is easily accepted by the people in the Third World, and many MDs from there come to China to study acupuncture. Acupuncture has spread quickly in the Third World.

The development of acupuncture in Canada is limited. Acupuncture is not treated as a profession. When acupuncturists do acupuncture on patients, they know they are not considered a doctor by law, no matter whether they are an MD or an MD plus Ph.D. They cannot choose the methods that the patients really need, such as the points on the head, point injections and herbal medicine combinations to improve the treatment effect. Acupuncturists should protect themselves in case patients do not accept or are not happy to have this kind of treatment.

In order to protect the public health of Ontarians, those who intend to practise acupuncture must go through a reasonable, common, standardized qualification process, and only one standardized set of criteria can be used. That is called acupuncturist.

TCM and acupuncture is an integrity medicine: in the macro view, to think about the human body and treat the disease. For the same disease in a different human body and different season or different weather, the treatment is different. That is why we ask for the right of diagnosis. The effective treatment is based on the correct diagnosis.

The philosophy of TCM and acupuncture in treatment is balance and harmony, such as the balance of yin and yang, the harmony of the human body and nature. The theory of TCM and acupuncture is a very advanced, modern science. Honestly, it is not easy to understand and apply this theory only using a yes-or-no philosophy. However, once you know that, even though you are politicians, you will get advantage from it.

Because the theory and philosophy of TCM and acupuncture are very different from western medicine, it is hard to translate and explain to the western world, especially the herbal medicine. That is why most people know more about acupuncture than TCM herbal medicine. If we would say that TCM has two legs, one is the herbal medicine, the other is acupuncture. Sometimes the patient needs both legs to stand up.

Second, in the bill it is best to indicate clearly that grandparenting will be granted during the initial stage of the licensing process in order to ensure that experienced and qualified practitioners have the right to continue their career. Of course, there must be some standards and criteria.

Third, to respect the origin and history of TCM, in the bill it should clearly state that the licensing examination will be available in the Chinese language.

We appreciate the great efforts all of you did for Ontarians, including us, TCM and acupuncture professionals. Once again, we are looking forward to seeing the regulation of TCM and acupuncture to benefit Ontarians and TCM and acupuncture practitioners.

Finally, I would say that I'm here just to deliver the voice of our association. However, I don't think I'm the right person to answer the questions so I represent 1,800 different voices. Our members come from about 15 different countries: Russia, India, Japan, Korea, China, Philippines. It's harder to get one voice, but most definitely we're looking forward to having the legislation regulating Chinese medicine and acupuncture. Thank you so much.

The Chair: Thank you, Ms. Zhang. We have just 30 seconds each, beginning with Ms. Martel of the NDP.

Ms. Martel: I just want to be clear. You need to get access to the controlled act to make a TCM diagnosis, because right now that's not in the bill.

Ms. Zhang: Yes. I'll just say this for myself, not for the 1,800 people. At the beginning, we didn't quite understand about the doctor title. Some of them were so excited. You get the "doctor" title, but, no reason here, we just know you can't use your diagnosis and prescription. So—

The Chair: With respect, Ms. Zhang—thank you, Ms. Martel—we'll go to the government side.

1640

Mr. Kular: Thank you for appearing before the committee and thank you for supporting this bill. The government's intent is to establish this new college, if this bill passes. That college will definitely set the standards for traditional Chinese medicine and acupuncture.

The Chair: Mr. O'Toole.

Mr. O'Toole: Thank you very much for your presentation. I would agree with many of the things you say here. On page 2 you say, "TCM and acupuncture are very different from western medicine." I completely agree, as you described it.

Also, I don't understand how you can say two things. This bill will not allow you to practise as you do today, as I understand it, so how can you support the bill? Dr. Kular suggests that you support the bill.

The Chair: With respect, I will have to intervene. Thank you, Mr. O'Toole and Ms. Zhang. Time has expired. We thank you for coming forward and for your deputation to this committee. Thank you very much.

CANDACE LAU

The Chair: We'd now invite our next presenter, Candace Lau, to come forward. Please be seated. As soon as you are seated, your time will begin. Thank you, Ms. Lau. Please begin.

Dr. Candace Lau: Ladies and gentlemen, I'd like to thank the Liberal government for taking the steps and consultations in order to regulate traditional Chinese medicine and acupuncture.

As more and more people undergo acupuncture treatments, acupuncture should become a controlled act that is authorized to those who have the appropriate knowledge, skill and judgment to perform acupuncture. I support the practice of acupuncture as a treatment modality within the scope of practice for symptom control, especially for

pain, by health professionals well trained in acupuncture techniques.

There are a few concerns. I do like the legislation for regulating traditional Chinese medicine and acupuncture, but, in my opinion, we would like good regulation that consists of a lot of different aspects, not only for public safety but also for upholding a high standard of practice. It is only then that I would like to support legislation like that.

Concern number one: Acupuncture and traditional Chinese medicine practitioners, after years of training and passing the licensing requirements, can only do assessments. The question is, when will they be proficient enough to diagnose under the TCM principles to treat? Why is there no provision for them to attain enough knowledge, skill and judgment for a proper TCM diagnosis? This is not present in the bill. I think this is also not good for the public. If we cannot perform a proper diagnosis, how can we perform a proper treatment? So I think there should be a provision in the bill to do this. There are other professions, like chiropractors, not to say medical doctors, that all have the ability to communicate a diagnosis.

Since acupuncture is authorized to those who have the appropriate knowledge and skill to perform acupuncture, the bill only regulates TCM and acupuncturists for the use of acupuncture in treatments. No such regulation is there for other health professions.

There should be amendments to this bill to put in place a system for making sure of a high level of competence for all those who will do acupuncture. The regulatory colleges whose members legally can perform acupuncture in the future may not have the experience and expertise to set standards of practice for their members.

Without such a system, there should be specific guidance on the practice of acupuncture for different health groups, like midwives, pharmacists, etc. The use of acupuncture should be limited only to their scope of practice, like those who are in the practice of pain management for the management of pain, as acupuncture will be helpful as an adjunct in their practice for a drug addiction, for quitting the addiction and the side effects of the addiction, but not the general coverage of health problems as practised by acupuncturists.

I think there should be very specific guidance in this area because, again, it is the level of high standards and training that is required to perform acupuncture in various aspects. It might require less training if one wants to do acupuncture for the management of pain, but if one wants to do acupuncture for many different health problems such as diarrhea, respiratory problems, nausea and women's problems they need substantially more training and more experience. So I think there should be more specific guidance in the bill to account for this aspect.

Also, medical doctors have years of education and years of internship. So if they require only, let's say, 200 hours of training for acupuncture, I would agree, but for other health professionals there are various standards of

education within their scope of practice. For lab technicians they have much less education, and if they were allowed to do acupuncture because there are no specifications on their limitation, then they would require a much bigger scope of training, like pathology, physiology and things like that. In the present bill there is no mention of whatever training they require to do acupuncture and whatever principle is behind it.

You probably know that there are two ways of looking at acupuncture: the TCM way and the anatomical way. These are very different and their results can be different. No doubt the anatomical way of doing acupuncture can deliver good results, as has been witnessed by many, but the TCM way of doing acupuncture has not only as good results or better, but it's also a way of improving the body's health. It's not just for pain management. So it is a much broader scope of practice, but the general public doesn't know. They only know that it is acupuncture. So there should be some clear indication as to what type of acupuncture the public will be getting.

Traditional Chinese practitioners should be able to prescribe, dispense, sell and compound herbs, natural herbal products and also restricted herbal products and herbs. They should have the required education to do dispensing of restricted herbal products.

Thank you very much. I'm ready to answer any questions.

The Chair: Thank you, Ms. Lau. We have limited time for each side: about 30 seconds or so. Mr. Patten is to begin.

Mr. Patten: Thank you very much for your presentation. I did have three or four questions but I will just point out one where it says, "Acupuncture for different health groups, like midwives, pharmacists. The use of acupuncture should be limited only to their scope of practice"—which is exactly what the bill says; it agrees with you on that—"like who are in the practice of pain management ... as acupuncture will be helpful as adjunct in their practice"—that's the intent—"for drug addiction, for quitting addiction and the side effects of addiction, but not the general coverage of health problems as practised by acupuncturists." That's true, and that's what the bill tries to do.

The Chair: Thank you, Mr. Patten. I will now offer it to Mr. O'Toole, the PC side.

1650

Mr. O'Toole: Thank you very much for your presentation. It comes down to what you said last: that there are two forms of acupuncture, the TCM method as well as the anatomical method. We've been told today that most of the regulated professions who practise acupuncture are permitted to do so by the college, which has some method of determining appropriate levels of training. Do you agree with the current argument that acupuncture can be performed by a chiropractor, for instance? Do you agree?

Dr. Lau: As I just mentioned before, if they have a few hours' training and then do acupuncture, it is mainly for pain management. They have the training—

The Chair: With respect, Mr. O'Toole, I will have to offer it to the NDP now. Ms. Martel.

Dr. Lau: [*Inaudible*] school of practice. I don't think they have the training for that.

Ms. Martel: Very briefly, you mentioned some controlled acts that you should have access to—for communicating a disease, also dispensing drugs. In the 2001 HPRAC report, that was the recommendation. I don't know why we're in a position now where there are no controlled acts that are going to be authorized to TCM practitioners or acupuncturists. We will have to see whether or not the government is open to some amendments so that those controlled acts can be given to college members.

Dr. Lau: Yes. Probably it's not very clear when we are looking at the bill. So we would probably have the concession—that this is not presented or allowed to us.

The Chair: Thank you, Ms. Martel, and thank you as well, Dr. Lau, for your deputation to this committee.

TORONTO INSTITUTE OF CHINESE MEDICINE

The Chair: I now invite S.Y. Mak, president of the Toronto Institute of Chinese Medicine. I understand, Ms. Lau, that you will be functioning as translator. Please be seated. As I've mentioned, you have 10 minutes in which to do the combined presentation. Please begin, Mr. Mak.

Mr. S.Y. Mak: Because there is not enough time and my English is not very well, I will let Dr. Lau translate for me, okay?

The Chair: Please.

Dr. Lau: Just one word: Dr. Mak has been one of the first TCM people who advocated for the regulation of traditional Chinese medicine and acupuncture. He is the president of the Canadian Society of Chinese Medicine and Acupuncture. Please note that Zhao Cheng, who spoke on Monday, can only represent himself, because in his presentation he was speaking on behalf of CSCMA, which is not right. Just now Dr. Cheng spoke on its behalf.

"Suggested amendments to legislation for traditional Chinese medicine and acupuncture" from the Toronto Institute of Chinese Medicine.

"After the first reading of Bill 50, the majority of traditional Chinese medicine and acupuncture associations in Ontario and those in this field all welcome the legislation of TCM and acupuncture.

"At the same time there are grave concerns about certain provisions in the bill. There is consideration that these provisions do not safeguard public safety of Ontarians and do not tally the original intention to legislate Chinese medicine and acupuncture as a specialized profession.

"Therefore, the individual associations and colleagues in this field had launched multi-level, multi-channel communication with the provincial government, and strived for reasonable revision to the legislation. The following are our suggestions to the revisions to Bill 50. We hope

that the provincial government will give careful consideration to our suggestions.

"(1) Traditional Chinese medicine has always been a complete medicine discipline with its own collection of diagnosis, treatment and prevention to our body. It has its unique theoretical system. Chinese herbal medicine, acupuncture, tuina massage and the bone-setting treatments all are clinical specialties of traditional Chinese medicine, and definitely are not just some other complementary treatment. The revised legislation must give clear and fair definitions to the traditional Chinese medicine and acupuncture profession. To provide a fair ground, those health professional groups with the diagnostic authority, such as medical doctors, should follow the WHO acupuncture guideline to enter this profession. The remaining health professional groups should work together with the proposed college of traditional Chinese medicine and acupuncture to establish one reasonable standardized set of criteria for anyone who intends to enter this profession.

(2) The revised bill should add the authority to TCM diagnosis to legislated traditional Chinese medicine doctors.

(3) The bill should emphasize that acupuncture is not separable from traditional Chinese medicine. The foundation for acupuncture is governed by traditional Chinese medicine theory. When it is separated from Chinese medicine, it is already no longer the same for acupuncture. Therefore, only traditional Chinese medicine doctors and acupuncturists should be authorized to perform this specialized work of acupuncture, and only acupuncturists can have the qualifications to use the specific name "acupuncture."

(4) The revised bill should add that registered traditional Chinese medicine doctors can perform traditional Chinese massage treatment. Those who want to perform Chinese medical massage—tuina—have to accept guidance from the college of traditional Chinese medicine and acupuncture.

(5) The bill should be revised to allow registered traditional Chinese medicine and acupuncture practitioners to use filiform needles, three-edged needles, laser needles and electric stimulation machines.

(6) The bill should be revised so that only registered traditional Chinese medicine and acupuncture practitioners from the college of traditional Chinese medicine and acupuncture can be authorized to prescribe traditional Chinese medicine formulae, including Chinese medicinal teas, powders, pills, tablets and medicinal creams.

(7) The bill should clearly authorize the college of traditional Chinese medicine and acupuncture in the early licensing stage to apply grandfathering priority in issuing licenses to traditional Chinese medicine and acupuncture practitioners.

(8) The bill should clearly authorize the college of traditional Chinese medicine and acupuncture to use multiple languages, including the right to use Chinese in the professional licensing examination.

The Chair: Thank you, Mr. Mak and Ms. Lau. We do have a generous amount of time, I guess about a minute

and a half per side, beginning with Mr. O'Toole of the PCs.

Mr. O'Toole: I first of all have to declare that my understanding of what you said is clear, but in how it is a close relative to the medicine as it is practised in North America is quite different. I think it's important that the government is trying to find a way of regulating all of those procedures which traditionally and scientifically have served your community well and make it available in a regulated environment while also respecting where our society is. Do you follow me? How do you regulate something that your culture wants and is probably suspicious of the North American approach to medicine? But there have to be standards, and those standards, to be demonstrated—for instance, some people today would be very upset that you would question whether or not someone else, outside of TCM, could administer acupuncture.

The Chair: I'm sorry, Mr. O'Toole, I will have to intervene. To Ms. Martel now.

Mr. O'Toole: I thought you said there was a lot of time.

The Chair: You used it.

Ms. Martel: Thank you for your presentation. One of the changes, then, that you're recommending would be that the title of the college also change so that it's expanded to include "acupuncture," which it does not right now. Am I correct?

1700

Dr. Lau: I don't quite understand; I'm sorry.

Ms. Martel: The name of the new college right now is the College of Traditional Chinese Medicine Practitioners of Ontario. That's what the bill proposes. You make many references to "college of traditional Chinese medicine and acupuncture" in the brief. So are you suggesting to the committee that "acupuncture" be added to the title of the new college?

Interjections.

Dr. Lau: Yes, I think he would like to include "acupuncture"—

The Chair: With apologies, Ms. Martel, that will have to suffice as an answer to that. To the government side, please. Mr. Patten.

Mr. Patten: Thank you. I don't have much time, so I'm going to point out something I think you'll be happy with. If you read the explanatory note to the bill, page 1, it says: "The registrar must notify each member of the college if the minister refers a suggested statutory or regulatory amendment under the new act to the Health Professions Regulatory Advisory Council." Then it goes on:

"(b) prescribing and governing the therapies"—plural—"involving the practice of the profession and prohibiting other therapies."

So it's not limited to simply one area. It's looking at, appreciating and recognizing traditional Chinese medicine as a philosophy of health and a different approach than western medicine, and then saying that, under that, it can deal with a "practitioner," whatever it comes up with.

But it's the college that will deal with this, an acupuncturist. What that will mean is that acupuncturists out of TCM are the only ones who will be able to use that term. If it's a physiotherapist or a chiropractor and they only have what's within their own scope of practice, limited training, they can't use "acupuncturist." They won't be able to use "acupuncturist."

Dr. Lau: We understand that. They won't be called acupuncturists.

Mr. Patten: That's right. But you have to let this group work out those particular elements.

The Chair: Mr. Patten, thank you very much for your question. Thank you, as well, Mr. Mak, and thank you again, Ms. Lau, for translating. We appreciate your deputization on behalf of the Toronto Institute of Chinese Medicine.

Dr. Lau: Mr. Mak wants to express his regret that he has been fighting for the regulation of TCM and acupuncture for a long time, but he thinks that—

The Chair: Thank you very much.

INTERNATIONAL SCALP ACUPUNCTURE RESEARCH ASSOCIATION OF CANADA

The Chair: I now invite our next presenter, Mr. Ken Lau, the president of the International Scalp Acupuncture Research Association of Canada. Mr. Lau, please be seated. Please begin.

Mr. Ken Lau: Ten minutes, right?

The Chair: Please.

Mr. Lau: Okay. I appreciate it. I'll jump right into the topic of the issues and concerns of the regulation of traditional Chinese medicine and acupuncture.

In the scope of practice: The practice of TCM and acupuncture is the assessment of conditions of internal organ systems and the TCM diagnosis, prevention and treatment, primarily by herbal medicine and acupuncture, of disorders arising from the imbalance of yin and yang, chi and blood; and also involving the meridian channels.

The second point, authorized acts: In the course of engaging in the practice of TCM and acupuncture, a member is authorized, subject to the terms and limitations on his or her certificate of registration:

(1) to communicate a TCM diagnosis identifying, as the cause of the person's symptoms, disorders arising from the imbalance of yin and yang, chi and blood of internal organ systems as well as in the meridian channels;

(2) to move the joints of the body beyond a person's usual physiological range of motion using a fast, low-amplitude thrust;

(3) to use tuina as one of the therapeutic procedures in TCM;

(4) to prescribe, dispense, sell and compound herbs and natural herbal products.

Basically, all that I've mentioned here has been practised in China for thousands of years. The effectiveness of them: You can see the Chinese population and know whether it's a good approach or not.

Good regulations should be guided by the highest quality of health care service, protection of public safety,

fairness to all parties concerned and providing enough information to consumers to enable them to make informed choices.

There are valid concerns, like the first one:

(a) Highest quality of health care service in jeopardy. Bill 50 allowed other health care professions to do acupuncture with unspecified training. Not all 23 health professions have the same level of training in biology, chemistry etc. When they are allowed to perform another scope of practice outside their expertise without training guidelines, especially for those professions for which acupuncture is not an adjunct therapy, it is unconvincing that high quality of service can result.

Also, other health care professions can have their acupuncture services governed by their board. My question is, who is best qualified to have the experience and expertise to govern acupuncture, the college of TCM or the governing boards of other health care professions? It's very obvious.

(b) If the governing boards do not have enough professional expertise and they are allowed to govern a procedure below the dermis, public safety is at risk, especially when the government allows them to set their own standards.

(c) Fairness to all parties concerned: We do not object to other health professional groups using acupuncture to help their clients. As a matter of fact, this shows acupuncture works better. We just want the government to ensure that there must be one reasonable, standardized set of criteria for anyone who intends to enter this profession. Our priority is the health and safety of all Ontarians.

(d) As far as consumers are concerned, the bill allows no provision for informing the public of the differences in the principles of acupuncture performed by acupuncturists and those provided by other health care professions.

In conclusion, there must be one reasonable and fair standardized set of criteria for anyone who intends to enter this profession. Also, the government should lift off the mandatory referral and let the acupuncturist perform acupuncture independently.

The following is from some of the cases I performed. I, myself, specialize in brain damage and nerve damage acupuncture. I find now that with supervision I get less results; without supervision I get much more results, the reason being that, with supervision, those being paid by their insurance company always go to a medical doctor looking for advice. They always say there's no medical benefit and that's it, so there are no results. But for those patients who pay from their own pocket, I have a few cases that—if you have time, you can sort of browse through them. It's not three months' time; for the first one, after 80 sessions that autistic boy started to say something and communicate much better. His parents were so amazed that they wrote a letter to express their appreciation and recommended acupuncture.

In another case, the parents were so rich that they had their daughter evaluated before the treatment. Six months

later, they sent their daughter down to the States again to have her evaluated. They found out that their daughter, who is developmentally delayed, had a 570% increase in intelligence. So if it's being covered by the insurance company and then they ask for advice from the other health professions, I can only say to the parents that this—okay, a good chef can cook a good steak, but how can they teach, train, ask the oriental dim sum chef to make dumplings? It's a completely different field.

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So I'm sort of upset. I feel that my patients, especially for most of them—I can see the chance to recover and, all of a sudden, because of "no medical benefit," that's it; that's the end. This will deplete their right to recover, so I'm feeling bad about that. That's why, for this particular point, I recommend that the government should lift off the mandatory referral and let the patient decide. I always advise my patients, "If you get a benefit, you stay. If you don't get a benefit, save your money and go to somebody else and do something else." I have a patient who travels all the way from Australia every two months to see me for one whole month and goes back to work again, because of a muscular atrophy problem. But he's gaining size, and no one, so far, can help him to grow.

Am I running out of time?

The Chair: There is still some time remaining for questions, briefly. About 30 seconds each, beginning with Ms. Martel of the NDP.

Ms. Martel: The section that you just referred to, "the government should lift off the mandatory referral": Where is that in the bill? I apologize that I—

Mr. Lau: They said that when you treat a patient up to a certain period, then you have to give it back to a medical doctor, something like that.

Ms. Martel: I'll get some further clarification from the ministry.

The Chair: Thank you, Ms. Martel. To the government side, Dr. Kular.

Mr. Kular: Thank you, Mr. Lau, for appearing before the committee. The government has the same idea. Our priority in this bill is the safety of Ontarians, and you agree on that one, right?

Mr. Lau: Exactly. But when you let the other health professionals set their own standards, this is not the same. Before, there was no standard, and now you propose a multiple standard. The way I interpret this approach is, now you are trying to get some support from those groups, and you're letting them do whatever they want, and trying to restrain the Chinese herbal doctor and acupuncturist from doing the job they're supposed to do.

The Chair: With respect, Dr. Lau, I'll offer it now to the PC side: Ms. Witmer.

Mrs. Witmer: Thank you very much, Dr. Lau. I just had a chance to scan some of the cases here. There has been phenomenal improvement in some of the individuals you've had an opportunity to treat. It's really quite remarkable.

Mr. Lau: I do have a booklet. In case any one of you is interested, you can e-mail me; I can send some more

information. The Guillain-Barre syndrome patients really recover well, while, in Lyndhurst, other patients suffering the same disease still need a crane to lift them up and off the bed. But my patient, after two months, can jog and run.

Mrs. Witmer: Excellent. Thank you very much.

The Chair: Thank you, Ms. Witmer, and thank you, Dr. Lau, for your deputation for the International Scalp Acupuncture Research Association of Canada.

Mr. Lau: Can I just make a comment?

The Chair: Your time has now expired, and with respect, I now invite our next presenter.

COLLEGE OF NURSES OF ONTARIO

The Chair: Our next presenter is Anne Coghlan, executive director of the College of Nurses of Ontario. Ms. Coghlan, please be seated. Please introduce your colleague as well. As you've seen the protocol, you have 10 minutes in which to make your presentation, and I invite you to begin now.

Ms. Anne Coghlan: Thank you very much, Mr. Chair, for the opportunity to present to the standing committee on social policy. My name is Anne Coghlan and I'm the executive director of the College of Nurses of Ontario. With me today is Cheri Vigar, manager of policy at the college.

The college of nurses is the regulatory body for nursing in Ontario. I'm here today to reinforce that the college is supportive of nurses being able to continue to use acupuncture in their nursing practice as a complementary therapy. Nurses have historically used the acupuncture technique of needling to stimulate various points on the body to encourage healing, reduce or relieve pain, and improve the function of affected areas of the body. They have focused on acupuncture as a treatment modality within the context of Western medicine.

Many of the nurses performing acupuncture in the province are found in pain management centres or clinics or in addiction counselling centres. They can also be found in any setting where patients are receiving health care services and want to combine a traditional Western medical approach with one of the complementary therapies in order to increase the efficacy and impact of their treatment.

Although nursing data is limited, a research study published in 2003 reported that, out of a sample of 215 nurses registered with the College of Nurses of Ontario, 9.3% reported using acupuncture in nursing practice. These nurses may be found in urban settings or isolated rural locations where access to health care services and providers is severely limited.

My comments will address three specific areas: scope of nursing practice, education, and standards of practice.

In relation to scope of practice, Ontario's scope of practice/controlled acts model for regulated health professionals was designed with public protection in mind. It was also designed to allow for the evolution of professions and for increased patient choice in selecting a

health care provider. As a result, many of the scope of practice statements under the Regulated Health Professions Act are very broad in order to enable the performance of a wide range of activities for which individual practitioners are competent and accountable. This is the case with nursing.

Nursing's broad scope of practice statement states: "The practice of nursing is the promotion of health and the assessment of, the provision of care for and the treatment of health conditions by supportive, preventive, therapeutic, palliative and rehabilitative means in order to attain or maintain optimal function.

Nurses also have access to three of the controlled acts, one of which is the "performance of a prescribed procedure below the dermis or a mucous membrane." We believe that the performance of acupuncture by nurses is captured under this specific controlled act and that nurses who have gained the in-depth knowledge base and technical skills required for the performance of acupuncture should be able to utilize and perform it as a therapeutic intervention.

With respect to nursing education, the specific knowledge, both theoretical and technical, related to the safe and effective performance of acupuncture is not a part of a nurse's basic educational program. There is only a minor focus on complementary therapies in general, which outlines the need for an assessment process that captures the appropriateness of a complementary approach and its possible interactive effects.

What is a part of the nursing program is a solid foundational knowledge of anatomy and physiology, and the interrelationships among the core body systems. Nurses study the interactions and the impact of therapeutic interventions on the core body systems and on the equilibrium or balance of human processes. They study sociological and psychological theories of human behaviour. This holistic foundational knowledge, when combined with the ability to think critically and to exercise professional judgment, allows the nurse to build upon her or his expertise through a continuous application of knowledge to new situations.

There are many examples of activities that nurses perform in their practice that grow out of their core nursing knowledge. For example, nurses in their educational programs do not learn how to insert nasogastric feeding tubes or intravenous lines, but these become elementary procedures for experienced nurses, depending upon context of practice. These are only two examples, in addition to acupuncture, of the many activities performed by nurses that are not a part of the initial education program. Nurses do acquire the necessary knowledge and skill, however, through continuing education and experiential learning.

Formal education programs are available which enable nurses and other health professionals to gain the core competencies necessary to perform acupuncture safely. One such program is offered at McMaster University and is targeted at nurses, physicians, chiropractors and other regulated health professionals.

With respect to standards of practice, the college has no practice standard specific to the performance of acupuncture, nor does it have a standard specific to any other activity that falls under the controlled act of “prescribed procedures below the dermis.” Our practice standards and guidelines are broad in order to provide guidance and set expectations for nurses that encompass all aspects of nursing practice and to enable nurses to respond appropriately to the changing needs of our health care system.

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Although our standards documents are not specific to acupuncture, the following standards and guideline do provide guidance that is relevant to the performance of acupuncture:

—Our professional standards provide an overall framework for the practice of nursing and include requirements relating to accountability, continuing competence, knowledge and application of knowledge;

—The standard related to decisions about procedures and authority outlines a process to be used by nurses to determine if it is appropriate for them to perform a specific procedure and if they are competent to perform the procedure;

—The infection prevention and control standard describes the responsibilities and accountabilities of every nurse in preventing the transmission of infection; and

—The complementary therapies guideline provides guidance to nurses and helps them determine when it is appropriate to incorporate complementary therapies, including acupuncture, into their nursing practice.

All of our standards documents address the performance of all procedures in terms of the nurse’s competency to perform the act safely, effectively and ethically.

The College of Nurses of Ontario believes strongly in the concept of self-regulation and holds its members accountable for the safe performance of all interventions that they carry out, including acupuncture. We are supportive that acupuncture continue to be authorized for competent, regulated health professionals, as is currently stipulated in Bill 50.

I’d be pleased to answer any questions. Thank you.

The Chair: Thank you, Ms. Coghlan. We have about 45 seconds each, beginning with the government side. Mr. Patten.

Mr. Patten: Thank you very much for your presentation. It would appear that Bill 50 would put a little bit of pressure on your college, it would seem to me, in terms of utilization of what I would call “adjunct” acupuncture. It doesn’t appear that there are any standards at all, unless I misinterpreted you, in terms of acupuncture?

Ms. Coghlan: To the contrary, what we’re saying is that our current standards, which I’ve outlined, would apply to the performance of acupuncture, as they do to the performance of any act that a nurse engages in now.

Mr. Patten: What about educational training standards? What’s your bottom line in terms of someone being able to—

The Chair: Mr. Patten, with respect, it’s now the floor for the PC side. Ms. Witmer.

Mrs. Witmer: Do you know what? I’ll continue along the vein of Mr. Patten, because I had that question too. What educational requirements are there? What minimum standards? We’ve heard from some of the other colleges about the standards that they’ve set for acupuncture.

Ms. Coghlan: We don’t have a specific standard in relation to acupuncture. As we indicated in our written submission, if the government were to decide that there should be a common standard for the controlled act of performing a procedure below the dermis, that is something that we would be willing to participate in collaboratively with other colleges. However, each nurse is accountable to ensure that she or he has the necessary knowledge, skill and judgment and is competent to perform any nursing intervention. So the same principle would apply to acupuncture as applies to many other interventions. I think nurses have a track record of pursuing additional education to ensure their competence.

The Chair: Thank you, Ms. Witmer. With respect, now to Ms. Martel.

Ms. Martel: We’re getting at the crux of the issue in terms of who we think should be able to provide acupuncture and who shouldn’t. The government has taken a route that says, “You’re a member of a college and you have a standard of practice within the scope of practice of the profession.” For me, that causes a lot of confusion because there are a number of professions that don’t have a standard of practice for acupuncture.

I think the better way to do it might be to look at it as a controlled act, because it is through a controlled act that you, more than anything else, actually have the right to perform acupuncture. You have the controlled act that says that you can provide a procedure below the dermis. Wouldn’t it make more sense if we actually said, “These colleges will have this controlled act of a procedure below the dermis, and it’s those ones who have that controlled act that can provide acupuncture”?

Ms. Coghlan: That is an option that was considered during the consultation. Certainly, if it is a controlled act, then the same standards that apply to the execution of any of the other controlled acts authorized to nursing would apply.

The Chair: Thank you, Ms. Martel, and thanks to you as well, Ms. Coghlan and your colleague, for your deputation and presentation on behalf of the College of Nurses of Ontario.

PERRY HURLEY

The Chair: I now move directly to our next presenter, Perry Hurley. Mr. Hurley, as you’ve seen, there are 10 minutes in which to make your presentation. Please begin.

Mr. Perry Hurley: Thank you for allowing me to speak. I have a number of issues which concern me about Bill 50. The main one is, how can the government ensure the public’s safety if there isn’t regulated training of acupuncturists?

Recommendation number 9 of Bill 50 allows all other health professionals' groups to practise acupuncture with unspecified training and to set their own standards.

Cost-effectiveness will also be reduced if people aren't properly trained in the procedures of acupuncture and able to properly diagnose and treat the problems that the patients have.

The third issue is that whether it's called acupuncture or adjunct acupuncture really makes no difference to the patients. It's still acupuncture and it will still help us in the long run. We want the government to enforce unified qualification for those who practise acupuncture on us and to use the same qualifications that they use for other medical practitioners such as surgeons or regular doctors.

My main concern is for the safety of the public if a person is only going to have very minimal training, such as 20 hours, different from traditional Chinese medicine, which requires, I believe, 2,000 hours of training, which is far more significant and of far greater benefit to both the practitioner and the patient. I believe that there should be a standard for the training and the diagnosing procedures that they would use on patients.

If there is any difference in the way medical doctors are to perform acupuncture—I speak for most patients, I imagine, because I've been one for four years now and I would really like to be informed if there are any changes to the regulation of the practice of acupuncture on patients in regard to healing. I have received it for four years and have made significant gains in all areas, including mental and physical.

Thank you for allowing me to speak. I would like to answer any questions that you have. If I could, I'd like to have Ken help me answer your questions.

The Chair: Thank you, Mr. Hurley. We have about two minutes or so per side. Mrs. Witmer.

Mrs. Witmer: You indicated that you've been a patient for about four years. How did you decide that you were going to receive acupuncture treatment?

Mr. Hurley: I was receiving traditional treatment provided by an NRS program, which was just normal muscle stimulation by electrolysis. She had extensive training in that area, yet my gains were very limited and stopped very quickly after she started treating me. Then I was introduced to Ken by her, and my arm and mind have continued to improve for the past three or four years now.

Mrs. Witmer: Thank you very much for telling your story.

Ms. Martel: I appreciate what you have raised here today. I was going to ask the same question that Mrs. Witmer did, in terms of how you came to choose acupuncture, so I don't have any further questions.

The Chair: To the government side. Mr. Ramal.

Mr. Ramal: Thank you for presenting to us and telling us your personal story. You mentioned many different issues here. You mentioned that you don't care what the name is of the acupuncture; you just want to receive some kind of treatment. I think you agree with us; that's why we're bringing this bill forward, to make sure that safety is being applied in the province of Ontario and

that the people who are receiving the treatment will be in safe hands. What do you think about this?

Mr. Hurley: I think it's most important to ensure the safety of the people who are being treated by such a practice as acupuncture. It can be a very dangerous treatment if it's not in properly trained hands.

Mr. Ramal: So you are in favour of regulating this profession, not opening it up to everyone. Maybe some people are trained for two weeks versus people who are trained for 10 years. You'll be in favour of setting up standards and regulations to make sure that safety is being applied?

Mr. Hurley: Yes, I would.

The Chair: Thank you, Mr. Ramal. Thank you, Mr. Hurley, and to your colleague for your deputation and presence today.

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VIRGINIA CHOI

JEFF BRYANT

MARY WU

The Chair: We now move directly to our next presenter, Virginia Choi. Ms. Virginia Choi, please do come forward. You may wish to introduce your colleagues as well. I would invite you to begin as soon as you're seated.

Ms. Virginia Choi: My name is Virginia Choi. With me are my fellow TCM student Jeff Bryant and my professor, Dr. Mary Wu. I just want to thank you for this opportunity to speak with you about the Bill 50 regulations. I am a first-year student. I'm also a registered nurse and have been working in the ICU for the past 20 years.

I'm not here today to tell you how good TCM is and that it works. I know you know it works and that's why we're here. I'm sure some of you have benefited from TCM and acupuncture. I'm here because I believe that you are the ones who have the power to make this Bill 50 a better bill and to help this profession to be a better profession to protect the public, to protect your health and your family's health. Also, I believe that you hold the key to building a solid foundation for this profession, to set this profession on the right path, to avoid mistakes that we make today and then pay more money for tomorrow.

In order to achieve your vision, first you must separate the titles of TCM practitioners. The public should have the autonomy to choose between a TCM doctor, a TCM acupuncturist, a professional who does adjunct acupuncture and a tuina massage therapist. You are here to make it clear to the public that each category title is different in order for them to make an informed choice.

It takes over 4,000 hours of training to achieve the level of TCM doctor. To become a TCM acupuncturist, it takes over 2,000 hours. On the other hand, for a professional who does adjunct acupuncture it only takes 200 hours. I don't believe they deserve the title. The privilege of this service should only be offered to pro-

professionals such as doctors, dentists and physiotherapists. It takes a tuina massage therapist over 2,000 hours to achieve the level of proficiency. They deserve the title "tuina massage therapist." By having a separate title, not only can a higher standard of practice be guaranteed; it also ensures that invasive manipulation such as traction and bone-setting cannot be practised by unqualified individuals.

Believe me, TCM regulation needs your leadership and your vision. Thank you for your time.

The Chair: Thank you, Ms. Choi.

Mr. Jeff Bryant: Recommendations for modifying Bill 50:

(1) Grant the TCM profession access to the controlled acts it uses for its whole scope of practice. Allow these controlled acts to be practised only by those people who are qualified: first, communicating a diagnosis and differentiation in identifying a disease or disorder as the cause of a person's symptoms according to traditional Chinese medicine; second, performing a procedure on tissues below the dermis, below the surface of a mucus membrane, for the purpose of acupuncture and its related procedures; third, setting or casting a simple fracture of a bone or a dislocation of a joint by qualified TCM specialists under the supervision of an MD; fourth, moving the joints of the spine beyond the person's usual physiological range of motion using fast, low-amplitude thrusts; fifth, administering a substance by injection or inhalation for the purpose of TCM treatments; sixth, prescribing, dispensing, selling or compounding Chinese medicines and natural health products.

(2) Distinguish between TCM acupuncture and adjunct acupuncture to promote fairness for the public to understand and decide what is most appropriate for their condition.

(3) Recognize the different specialties of TCM and grant them their appropriate titles: doctor of TCM; TCM practitioner; tuina massage therapist; TCM herbalist; and TCM acupuncturist.

(4) Change the name of the college to the College of Traditional Chinese Medicine Practitioners and Acupuncturists.

The following TCM therapies need to be incorporated into the controlled acts, and these acts need to be authorized to members of the TCM profession:

(1) acupuncture authorized to qualified professions only;

(2) TCM diagnosis;

(3) tuina massage therapy;

(4) prescribing, compounding and dispensing Chinese herbal medicine and natural health products.

I'm a student of traditional Chinese medicine in Toronto. I am in a four-year intensive program. Afterwards, I plan on going to China for a couple years to learn from some of the doctors there to improve my skills and learn some new techniques. I haven't decided if I will come back to practice in Ontario. I ask myself, why should I go to practice in a place where I can't use everything I've learned and where the people don't know

the difference between a TCM doctor and someone with a weekend course in acupuncture? Why fight a constant uphill battle when it would be so much easier to go and practise somewhere else?

Five years from now, like many other TCM doctors, I'll be looking for a place to set up a practice. With no controlled acts, our hands are tied. And with hardly any recognition for our education, we're invisible. If legislation stays the way it is, why would any TCM doctor choose to come to Ontario? With Bill 50 in its current state, it will drive a lot of potential talent away from one of the most recognized medicines in the world for a long time.

I love Ontario, and I love TCM. I would love to have the two agree with each other.

Dr. Mary Wu: I'm here in support, just to show you that this is the catalogue that those students are receiving. We have a doctor of traditional Chinese medicine diploma program offered by the Toronto School of Traditional Chinese Medicine. On page 11 you will see all the programs, five-year intensive programs. In this folder, there's also a list of toxic Chinese herbs and also contraindications of Chinese herbal medicine for pregnancy and so on. Also, there's a working list from the college of TCM and acupuncture of British Columbia. There's a picture about bone-setting and also injection therapy with acupuncture treatment.

So I'm here to support all my students, to support Bill 50 in terms of regulation, but we do feel that Bill 50 can be improved in order to protect the public better and to ensure the quality, safety and effectiveness of TCM services for all Ontarians.

The Chair: Thank you. We have about 30 seconds or so per side, beginning with the NDP.

Ms. Martel: Thanks for the presentation. In 2001, HPRAC recommended that acupuncture be regulated as a controlled act and authorized to a number of health care professionals, but we're not doing this in the bill. Did you appear before HPRAC that long time ago?

Dr. Wu: Yes, I did. Actually, I made 20 pages of comments on HPRAC's recommendation. I think HPRAC's recommendation was really pretty good. At the time, most of my recommendation was targeting the "doctor" title. With acupuncture, I feel that it does need to be a controlled act under (2), and also we need to separate the two different types of acupuncture with clear definitions and clear educational requirements and so on.

The Chair: Thank you, Ms. Martel. To the government side.

Mr. Patten: Thank you very much. I enjoyed your presentation. I would like to just point out one thing to give you some comfort, because this process is very difficult, as I am learning as well. Much has to be referred back to the rights and privileges as put out by HPRAC, that act itself. I refer you, later on, to clause (95)(1)(e), where you're concerned about identifying specific professions within TCM, for example. It says, "Defining specialties in the profession, providing for certificates relating to those specialties"—

The Chair: Mr. Patten, I will have to intervene and offer the floor now to the PC side.

Mrs. Witmer: If you want to continue from—you were answering Ms. Martel's question.

Dr. Wu: Okay. We do feel that TCM acupuncture and adjunct acupuncture should be clearly defined, and with the definition, the educational requirement competency standard as well as the limitations. I would suggest that you have a task force established to deal with all these issues and to authorize certain professions to practise at this time and to work on the rest later, in the future. In my written submission, I will clarify that in more detail and explain that.

Mrs. Witmer: Thank you very much.

Dr. Wu: You're welcome.

The Chair: Thank you, Dr. Wu, Ms. Choi and Mr. Bryant, for your deputation on behalf of the Toronto School of Traditional Chinese Medicine.

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CLEMENT WONG

The Chair: I now invite our next presenter, Clement Wong. Mr. Wong, as you've seen, you have 10 minutes in which to make your presentation. Please begin.

Dr. Clement Wong: Good afternoon, Mr. Chairman and members of the committee. Thank you for this opportunity to speak. I am Dr. Clement Wong. I am a family physician from Mississauga. I graduated from the University of Toronto faculty of medicine class of 1981, and also the Ontario College of Acupuncture and Chinese Medicine in 1997. I am a member of the Acupuncture Foundation of Canada Institute since 1982. I am a designated medical practitioner for Citizenship and Immigration Canada and for the RCMP.

Today my presentation will focus on the educational requirement for using the title of "doctor." Being a medical doctor, I still remember how much education I went through in order to practise with the title of "doctor". I would like to see Bill 50 set a university degree as the basic standard for TCM practitioners and also to go into a doctor's degree program for further training after their basic degree in TCM so that the patients will benefit from the care of a well-trained professional.

It has been a privilege for me to learn about acupuncture and to help my patients in the past 25 years with both Western medicine and traditional Chinese medicine. A full generation has grown up since my days in medical school.

I have been teaching with the faculty members of the Acupuncture Foundation of Canada Institute since 1995. The faculty consists of Dr. Joseph Wong, who has a fellowship from the Royal College of Physicians and Surgeons of Canada, and that's called Canadian tradition of anatomical acupuncture. There are MDs who teach with the faculty of the Acupuncture Foundation of Canada Institute who are also very knowledgeable in classical acupuncture. The students there are professionals from various medical fields. They do have the

advantage in their basic knowledge. My students come from a variety of different backgrounds, and I instruct them about classical acupuncture issues. On occasion, I am asked to facilitate in anatomical acupuncture classes too.

I became involved with the Ontario College of Acupuncture and Chinese Medicine and began instructing students about risk management in 1997. The Ontario College of Acupuncture is a community-based college. We serve students who are interested, and they are mostly mature adults with various backgrounds. The faculty consists of a retired professor who was the president of Guangzhou University of TCM in China, a teacher with a master's degree in herbal pharmacology, a teacher with a master's degree in Pallis diagnosis, and two MDs who graduated from the University of Toronto.

With those five professionals forming a team, trying to educate a new generation of acupuncturists, we came to realize that it is a lot of responsibility to educate these people who will be caring for patients. So over time we were really concerned about their scientific knowledge. We are concerned about further education for them. So eventually Ryerson University decided to adopt a program and offer this in the community service department. Ryerson University is in the process and almost ready to offer a degree program. It's just waiting upon the decision of Bill 50 and how it finalizes.

Currently, Ryerson University has a program for students in risk management in TCM. In that program, we teach clean needling techniques, infection control, assessment of vital signs and recognition of medical emergencies so that referrals to urgent care would be managed and arranged timely. This I see is what's missing in a lot of other colleges, that they do not have this part of training.

As an instructor at Ryerson, I have the support of various departments which make this happen. The community health program provided me with the lab for practical sessions. There are simulation mannequins to train students for vital signs assessments. Also, there's a whole department of distant education, with staff helping me to design a hybrid course that would offer Internet-based presentation of core material. The contact hours in class would be used to refine their practical skills and problem-solving abilities. Students then have the opportunity to ask questions over the Internet, do discussions, and I would give them feedback and so on. Ryerson also has very good support for the instructors in terms of helping them to develop their teaching skills and become a better educator.

I hope this government will become a strong leader in developing a doctors' program at the university level. What could be better than a university which is willing to serve the needs of the community, a forward-thinking educational institute, such as a university? What could be more suitable than to have education at the university-degree level to support the use of the title of "doctor"?

The knowledge in TCM has helped people for thousands of years and is helping patients in some areas where contemporary treatments have limited success. We

must invest our efforts in educating the new generation of TCM practitioners. We will need their services some day and their care when we get older. Let us not wait for another generation to pass before this happens.

The program at Ryerson is currently at the community service level. However, the development connections are all geared to offer a degree program. A formal submission has been sent by the president of the university.

I'm here to entertain questions, if there's a way I can help.

The Chair: Thank you, Dr. Wong. About 40 seconds each, beginning with Mr. Ramal.

Mr. Ramal: Thank you for your presentation. I'm going to be quick and fast on that one. We listened to many people who came before you talk about adding a grandfathering clause. I would imagine you're against that, because it doesn't require any study and regulations, since you're talking about something very intensive and are in favour of a degree level or equal-to-M.D. studies at university in order to license people or give them a doctorate. What do you think about this?

Dr. Wong: I will not comment on the grandfathering issue. My concern is the education of the new generations of acupuncturists in the future. I respect a lot of our professors who educate us in the college. Grandfathering, for those who are competent to still practise, would be good.

The Chair: Thank you, Mr. Ramal. With respect, Dr. Wong, I offer it now to Mrs. Witmer.

Mrs. Witmer: I'd just like to express my appreciation to you, Dr. Wong, for appearing here. Thank you very much.

Dr. Wong: You're welcome.

The Chair: Thank you, Mrs. Witmer. Ms. Martel.

Ms. Martel: Thank you for your presentation and for your advice to us to support the program at Ryerson. But I wonder if you can answer this question: You want to support the title "doctor" with educational requirements. Do you think that the bill should also support the "doctor" title by having those doctors of TCM also have some access to different controlled acts?

Dr. Wong: That's beyond my ability to answer.

Ms. Martel: Okay. Fair enough. Thank you.

The Chair: Thank you, Ms. Martel, and thanks to you as well, Dr. Wong, for your deputation and your presence here.

SINOCANN MEDICINE AND HEALTH ASSOCIATION

The Chair: We now move to our final presenter of the evening, and that is Miro Angelove and colleague, the vice-president of the SinoCann Medicine and Health Association. Gentlemen and ladies, if you might introduce yourselves. As you've seen, you have your combined presentation of 10 minutes. Please begin now.

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Mr. Miro Angelove: Good evening, Mr. Chair and respectable members of the committee. My name is Miro

Angelove. I am the vice-president of the SinoCann Medicine and Health Association. I have been practising Chinese medicine since 1995 here in Canada. Prior to that, I'd been practising in Europe.

To my left is Mr. Stephen Kwan. He can say some words about himself.

Mr. Stephen Kwan: My name is Stephen Kwan, associate with the health care association.

Mr. Angelove: To my right is Tsimay Cheung. She's been a practising doctor in Mississauga for a number of years and is a very respected member of our association.

Mr. Chair and ladies and gentlemen of the committee, I would like to start my presentation with one point I want to stress, and that is that acupuncture, throughout these proceedings, stands to be separated from traditional Chinese medicine, and in our view it's inseparable. Acupuncture is a part of traditional Chinese medicine. It's one of the tools of traditional Chinese medicine. Traditional Chinese medicine incorporates the use of Chinese medicinal herbs, the use of acupuncture, the use of massage—in China, that's tuina; in other countries, it's called different names—and other modalities.

The training in acupuncture should be based on the principles of traditional Chinese medicine. It would be dangerous, in my view, from the point of view of protecting the public, to mix the practice of acupuncture from the perspective of traditional Chinese medicine with the practice of acupuncture from different perspectives. Here, I'm referring to the other professions that use acupuncture; however, they don't use it according to the principles of traditional Chinese medicine. If the traditional Chinese medicine principles are not used in the practice of acupuncture, then this term should not be used, as it would be very confusing for the general public. Acupuncture has been established as a term for a number of years, thousands of years, as an expression of one of the modalities of traditional Chinese medicine.

Another point: In terms of the designation of the title of traditional Chinese medicine practitioner, yes, if a person is to become a doctor of traditional Chinese medicine, he has to have the training of the philosophy, the principle and the approaches to treatment according to traditional Chinese medicine. If that doctor wants to specialize later on in practising herbal medicine, then he has to have included in his training specialized training in herbal medicine. If the doctor wants to specialize in practising acupuncture only, then he has to include training in acupuncture within the philosophy of traditional Chinese medicine. If the doctor wants to incorporate both acupuncture and herbal medicine, he should have training in acupuncture and Chinese herbal medicine. Depending on the level of education, other practitioners may not be called doctors; they may be called just practitioners. It all depends on their practice, and I want to stress the practice as a priority in terms of the experience of the traditional Chinese medicine practitioner.

There is a saying that it's easy to study traditional Chinese medicine but difficult to practise, and that it may be difficult to study Western medicine but easier to

practise. Why is that? It's because the practice of Chinese medicine is an art. There is no guideline and no unified treatment. Everybody is unique in the treatment. There is no one treatment for arthritis, according to traditional Chinese medicine, as an example.

Minimum standards: The minimum standards should be based on the knowledge and application of the principles of traditional Chinese medicine, and traditional Chinese medicine only. If a practitioner is also a practitioner of another medical modality, that's fine. However, if he wants to practise traditional Chinese medicine, he has to be trained in traditional Chinese medicine. If the practitioner wants to insert a needle under the skin for any other reasons that deviate from the principles of traditional Chinese medicine, then the terminology should be different.

Again, traditional Chinese medicine should not be put under the umbrella of other medical practices or another system of medicine, because it's a stand-alone system of medicine. If the bill wants to regulate it, it has to regulate it as a stand-alone system of medicine.

The different practices of acupuncture—we know and everybody knows that practitioners have different training from different countries. The unifying factor, again, is the application of the principles of traditional Chinese medicine in the practice of acupuncture. No matter if the practitioner comes from Korea, Japan, Singapore, China or India, they all use the basic theory of traditional Chinese medicine and apply it in a different way.

In terms of training, the appointment of a college of traditional Chinese medicine would be very beneficial to supervise training and education. In our view, practitioners who have already practised here in Canada for more than 10 years may be grandfathered. However, there should be ongoing seminars—this is our suggestion—to put together all these practitioners from various trainings and practices and put them at par with the practice that has to be established in Canada.

For the new practitioners, an education of at least 2,000 hours has to be considered before they would be granted the title of doctor of traditional Chinese medicine.

Subject to your questions, this is, in brief, my presentation.

The Chair: Thank you, Mr. Angelove. We have about 40 seconds per side, beginning with Mrs. Witmer of the PC Party.

Mrs. Witmer: Thank you very much for a very informative presentation and for your recommendations here today. You're recommending that practitioners with 10 or more years should be grandfathered and should be exempt from formal training. Is that right?

Mr. Angelove: Yes, that's our recommendation. I stressed earlier the importance of practice. Presumably, those practitioners have been practising diligently throughout that time to be able to call themselves professionals and to be trusted as qualified practitioners.

The Chair: Thank you, Mrs. Witmer. Ms. Martel.

Ms. Martel: If I could just follow up on that, some might argue that's a significant amount of time for

someone to be grandfathered. How did you arrive at the 10 years?

Mr. Angelove: Of course, this is subject to discussion. Just in consulting with my colleagues and the members of the association, that's how we came up with this figure. However, this is what we feel, that 10 years of practice would be enough for grandfathering.

The Chair: Thank you, Ms. Martel. Dr. Kular.

Mr. Kular: Thank you, Mr. Angelove, for appearing before the committee. You had mentioned in your presentation that the practice of traditional Chinese medicine is an art. Do you think it's hard to set standards in an art?

Mr. Angelove: I think so; it will be. However, if we standardize the principles or, rather, in our standardization adhere to the already existing principles of traditional Chinese medicine, it will be safe enough and we'll be sure that the practitioner would be qualified enough to practise the art of Chinese medicine.

The Chair: Thank you, Dr. Kular, and thank you as well, Mr. Angelove, and to your colleagues for your deputation on behalf of SinoCann Medicine and Health Association.

If there's no further business, there are just three quick announcements: The deadline for written submissions is Friday, November 3, at 12 noon; the deadline for amendments to be received by the clerk—a soft deadline—is Tuesday, November 7, at 5 p.m.

Ms. Martel: On a point of order, Mr Chair: I'd like to make a request for information. I wonder if I can ask Mr. Patten if he might be able to do this for us, and then to get us the information as soon as it's available. I'm assuming that the ministry has some idea of which colleges would be able to perform acupuncture in accordance with the standard of practice and the scope of practice, and I wonder if the ministry can identify which colleges those are and share that with the committee.

Mr. Patten: As a matter of fact, we've already asked them and they're in the process of gathering that information for us.

Ms. Martel: Great. Thanks.

Mrs. Witmer: I'm just wondering, when do you expect that there will be a synopsis of all the recommendations and presentations ready to help us?

Mr. Philip Kaye: According to the subcommittee report, that has to be prepared by Monday, November 6.

Mrs. Witmer: Right, and we're to have our amendments in by Tuesday.

Mr. Kaye: Right.

Mrs. Witmer: Will any of that be ready by Friday, perhaps?

Mr. Kaye: I can attempt to provide some interim version by Friday.

Mrs. Witmer: Okay. Thank you very much, Mr. Kaye.

The Chair: Thank you. If there's no further business from the committee, the committee stands adjourned until clause-by-clause hearings on Tuesday, November 14. Thank you.

The committee adjourned at 1802.

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Deuxième session, 38^e législature

Official Report of Debates (Hansard)

Tuesday 14 November 2006

Journal des débats (Hansard)

Mardi 14 novembre 2006

**Standing committee on
social policy**

Traditional Chinese
Medicine Act, 2006

**Comité permanent de
la politique sociale**

Loi de 2006 sur les praticiennes
et praticiens en médecine
traditionnelle chinoise

Chair: Shafiq Qaadri
Clerk: Trevor Day

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 14 November 2006

Mardi 14 novembre 2006

*The committee met at 1603 in committee room 1.*TRADITIONAL CHINESE
MEDICINE ACT, 2006LOI DE 2006 SUR LES PRATICIENNES
ET PRATICIENS EN MÉDECINE
TRADITIONNELLE CHINOISE

Consideration of Bill 50, An Act respecting the regulation of the profession of traditional Chinese medicine, and making complementary amendments to certain Acts / Projet de loi 50, Loi concernant la réglementation de la profession de praticienne ou de praticien en médecine traditionnelle chinoise et apportant des modifications complémentaires à certaines lois.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, I call the meeting to order. As you know, we're here for clause-by-clause consideration of Bill 50, An Act respecting the regulation of the profession of traditional Chinese medicine, and making complementary amendments to certain Acts.

We have a number of motions before the floor, and I would offer it now, unless there are any opening comments, to section 1, motion 1, the PC Party. Ms. Witmer.

Ms. Shelley Martel (Nickel Belt): Chair, I want to raise a point of order. I'm not sure where would be the most appropriate place, so I apologize to Ms. Witmer.

This committee received a letter from the minister dated November 7, 2006—the same day, coincidentally, that the amendments were due. I'm assuming that we got it for a reason and that we got it because it's supposed to have some bearing on this particular committee and its work, so I'm wondering if we are going to deal with that before we start to deal with the amendments, because I have some questions about what I'm supposed to read into this letter, what it's supposed to mean. I don't know if Ms. Witmer feels the same way, but I certainly have some questions about what it means for this bill.

The Chair: I'll turn the floor over to the parliamentary assistant or anyone else able to reply.

Mr. Richard Patten (Ottawa Centre): The intent, of course, was to assure the committee that, while we will be short of time here to identify what all of the various health professions might see as a minimum standard, the ministry itself and the minister himself would be moving on contact with HPRAC to consult with the various professions—as you will see later as we go through the bill,

there are six of them that in particular have identified that there is some use of acupuncture in particular—and that there would be some collaboration. As you know, with HPRAC, the framework of the act is to encourage the various professions to work together and to acknowledge that indeed there is overlap, yet in the use of particularly acupuncture the function varies from profession to profession, as even the World Health Organization had acknowledged, and therefore it doesn't necessarily require the same standards. Nevertheless, the minister would move ahead on seeking the help of the council on contacting and moving in that direction.

Ms. Martel: A couple of questions. The minister referenced New Directions and said that some of the recommendations in here posed options for the health professions to collaborate. Right now, we don't have the minister's response to this document and we certainly haven't seen legislation on it. That's the first thing.

So what I want to be clear on, then, because all we have is this report and not a response to it: Is the letter a commitment to this committee and to the community at large that the minister is going to do a separate referral to HPRAC, a new referral to HPRAC, specifically on the matter of what are the minimum standards of practice to do acupuncture for the colleges that have been identified as those most likely to perform acupuncture? I would like to be very clear on what is the process here with respect to what the minister has raised, and should we read into this that the minister is committed to colleges having some minimum standard of practice in acupuncture before they are able to practise acupuncture?

Mr. Patten: If you look at the third paragraph, it talks about "recommendations [from the report] posed options for the health professions to collaborate in the development of standards of practice for the same or similar controlled acts, while respecting the competencies of the individual professions. I intend to seek further advice from HPRAC concerning these matters." So I think, as it was reported, that has been supported. We will follow up and ask HPRAC to do this.

Ms. Martel: So this is a new referral?

Mr. Patten: I guess so. Yes, it would be.

Ms. Martel: Do we have an idea of when the referral will be made to HPRAC, and can you give us some indication of what it will say?

Mr. Patten: I don't have that information at the moment. I take the letter on face value that this will be done in short order.

Ms. Martel: I just want to raise this again because, if you look at the bottom paragraph of the letter, this is certainly true where it says, "This has been an issue raised by some presenters during the hearings on Bill 50 and ... a topic of discussion among ministry officials and the health regulatory colleges." If it has been a topic of discussion at this point, can you tell the committee what the nature of those discussions has been and if there has been any preliminary agreement that can be shared with this committee about what minimum standards might be?

Mr. Patten: I'm sorry; I can't. I haven't had those discussions myself, except the indication from the minister that he is prepared to take this kind of action.

Ms. Martel: Can I ask you if the two colleagues who are with you from the ministry have been a part of these discussions, and what we could know about them?

The Chair: I would respectfully ask you to come and make your presentation.

Ms. Christine Henderson: Thank you, Mr. Chair. My name is Christine Henderson and I'm counsel with the Ministry of Health and Long-Term Care.

I'm sorry; I can only reiterate what Mr. Patten has said. The letter speaks for itself and does seek additional advice from HPRAC on issues that overlap in terms of standards of practice for the same or similar controlled acts of the various health professions.

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Ms. Martel: So you haven't been involved in any discussions that would have been related to that? Somebody's having some discussions, that's clear from the letter, but you weren't a part of that so you can't give us any more information.

Ms. Henderson: I sat during the days of standing committee, and there were a lot of submissions to this committee on these very issues. I certainly participated as part of that process.

Ms. Martel: Well, it was the point that it's been a topic of discussion among ministry officials and the health regulatory colleges that I was particularly interested in. I heard the discussion that was raised here as well, but as I read this, it looks like there's also been some discussion—not just at this committee, which we all heard—on a topic that's already been debated a bit among ministry officials and the regulatory colleges. I'm wondering if you were privy to those and if there's any information you can share with us about where that will be heading and whether or not the concerns that we all heard raised at this committee are going to be dealt with.

Ms. Henderson: I've answered the question to the best of my ability, Ms. Martel. I think you'll have to wait for the motions to answer some of your questions.

Ms. Martel: Well, I've looked through the motions and I've seen the new one. I'm raising it because my questions weren't answered, and maybe they're not going to be answered here today.

Just let me put this on the record. We all heard that there were very specific concerns raised about standards of practice among regulated health professionals with respect to acupuncture. For example, the chiropractic col-

lege is moving to the World Health Organization standard of 200 hours. I've read through their standard, and I think that it's quite fulsome. We also heard from the Ontario College of Nurses. Mr. Patten had some specific questions that imply that there is no particular standard that the College of Nurses has right now, specifically with respect to what the college feels would be necessary for one of its members to practise acupuncture. That's certainly what I took away from the question and answer from the college.

So this remains an issue in terms of what the minimum standard is that we as MPPs expect regulated health professions, even the ones that we are limited to, to have in terms of training, licensing, examination, hands-on experience etc. before they can practise acupuncture. I'm hoping that this is what this letter is referring to. I just want to be clear that that is what we're dealing with, because if it isn't, then that very contentious issue is not going to go away.

The Chair: Mr. Patten.

Mr. Patten: It is precisely that. I think the sensitivity there, as you can appreciate, is because it is the colleges that develop their own particular regulations. They make the regulations, they forward those to the ministry, and then, if they're agreed to, they go to executive council and the Lieutenant Governor for application. So it's not the ministry and it's not us who can say, "Here is what your regulations are."

In acknowledging the difference between the various professions and the fact that the act has said that they have the authority to develop their own regulations, what this letter is essentially saying is that we want to move down that path and deal with—it would be very easy for us to say, "Okay, 200 hours for everybody." But (1) we would be undercutting the authority that we have granted the colleges, and (2) even the World Health Organization itself has acknowledged that there are different usages for this modality of additional therapy in their main scope of practice. Some may be very minuscule or very minor; others may be more advanced and a little bit more expansive. Therefore, that may require extensive or differential minimum standards of training or qualification. But the minister is indicating the seriousness of this and the desire and willingness to move ahead to resolve that issue.

Ms. Martel: One final question, if I might: You said he was going to do that as soon as possible. Is there a deadline for this? Usually when you do a referral to HPRAC, you set a specific timeline for that to come back, so I'm wondering if you know whether or not there's a deadline on this.

Mr. Patten: No, I'm not aware of any deadline on it.

The Chair: Mrs. Witmer.

Mrs. Elizabeth Witmer (Kitchener-Waterloo): If we take a look at this letter, which I found to be a little bit lacking in concrete direction, is there definitely going to be a referral to HPRAC—

Mr. Patten: Yes.

Mrs. Witmer: —concerning this issue? He does end up by saying, "I look forward to HPRAC's analysis of

the issue,” but he’s never specifically said that he’s going to refer it to them. I think it’s important that people know what is going to happen. Saying that you’re going to seek further advice doesn’t necessarily mean you’re going to refer it.

Mr. Patten: I take this as a commitment to actually do it. I can’t see how someone could say that this is not an indication of intended action. It is.

Mrs. Witmer: Well, I guess I’d feel a little more comfortable if it was a little bit more definitive, indicating that “I plan to refer the issue to HPRAC,” and hearing from the minister what it is he hopes to achieve as a result of that referral.

The Chair: The question is before the floor, if either the parliamentary assistant or ministry staff care to weigh in on that. Otherwise, we’ll proceed.

Mrs. Witmer: I guess the reality is, we do have the New Directions report, but the minister has never responded to it. We’ve been waiting now quite a while. That was in the spring.

The Chair: Ms. Martel.

Ms. Martel: We’re trying to be helpful. Can I make a request of the parliamentary assistant? We can move on to the next sections. I would appreciate, though, if any of the political staff who are here from the minister’s office could please get us a concrete answer that what we are talking about is a new referral to HPRAC. It may well be true that there are some options in here outlined for collaboration, but we all know that the minister has not responded to this, and if there is legislation coming from this report, we haven’t seen it yet. So I would like some comfort that what we are talking about is a definite new referral to HPRAC on the matter of minimum standards to be set from those outlined in the schedule that comes later on for those who want to practise acupuncture.

The Chair: Thank you, Ms. Martel and Mrs. Witmer. I would invite both ministry staff as well as the parliamentary assistant to hopefully oblige these concerns.

I would now move to Mrs. Witmer and offer the floor to her for presentation of PC motion 1.

Mrs. Witmer: I move that the definition of “college” in section 1 of the bill be struck out and the following substituted:

“‘College’ means the College of Traditional Chinese Medicine and Acupuncture Practitioners of Ontario; (‘Ordre’).”

The Chair: Thank you, Ms. Witmer. If there’s no further discussion or commentary—

Mrs. Witmer: I’d like to speak to that.

The Chair: Please.

Mrs. Witmer: There were numerous presenters who asked that the name of the college be expanded to include acupuncturists. For example, we heard from Mary Wu of the Toronto School of Traditional Chinese Medicine, who indicated to us that acupuncture is one of the classes of TCM practitioners and is a recognized health profession across the world, especially in North America. We know that in the United States, over 40 states have acupuncture regulated, and the names of their regulatory

bodies all include the word “acupuncture.” So if we were to include the word “acupuncture” in the name of the college, it would certainly respond to the concerns that we heard from many who made representation. It would also be consistent with other areas in Canada and in North America. We also heard, of course, from the Global Chinese Medical and Acupuncture College. We heard from Dr. John Wang. And if we take a look in British Columbia, again, they have similar words referring to acupuncturist. So that would be our recommendation.

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The Chair: Any further questions or comments?

Mr. Patten: I just want to say that we have a motion here and so does the NDP, so the choice is one of words, context and title. “Acupuncture” itself is, in our view, not definitive enough, as it would be by saying “acupuncturist.” We agree that it should be part of the title. By the way, the term “acupuncture practitioner” is not a protected title in the bill, and therefore the status of that would be somewhat up in the air. But I think we’re all on the same page, essentially. As a matter of fact, “acupuncturist,” I believe, strengthens, because it keeps acupuncturists with the TCM college.

The Chair: Ms. Martel, any commentary?

Ms. Martel: We had the same motion as the government, so I think we’re trying to do the same thing. I’m not sure of all the nuances, so I’d probably just stick with the one I already put in.

The Chair: All right. Thank you. Yes, Ms. Witmer.

Mrs. Witmer: Do you know what? I’m happy to support the motion put forward by Ms. Martel and by the government. It’s the need to recognize acupuncture, so I would withdraw my motion as long as we move forward.

The Chair: Thank you. We have a withdrawal of PC motion 1.

We’ll now, therefore, offer the floor to Ms. Martel for NDP motion 2.

Ms. Martel: I move that the definition of “college” in section 1 of the bill be struck out and the following substituted:

“‘College’ means the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario; (‘Ordre’).”

The Chair: Thank you. If there is no further question or comment, we’ll proceed to the vote. Those in favour? Those opposed? Seeing none, NDP motion 2 is carried. We congratulate you.

We’ll now proceed to government motion 3.

Mr. Patten: In light of that, we withdraw our motion.

The Chair: Withdrawn.

Shall section 1, as amended, carry? Those in favour? Those opposed? Section 1, as amended, carried.

Now moving to section 2, PC motion 4.

Mrs. Witmer: Again, I would withdraw that.

The Chair: Withdrawal of PC motion 4.

We’ll proceed now to NDP motion 5.

Ms. Martel: I move that the definition of “college” in subsection 2(2) of the bill be struck out and the following substituted:

“‘College’ means the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario; (‘Ordre’).”

The Chair: If there are no further questions or comments, we’ll proceed to the vote. Those in favour of NDP motion 5? Those opposed? Carried.

Mr. Patten: We’ll withdraw 6.

The Chair: Withdrawal of government motion 6.

We’ll now proceed to the vote on the section. Shall section 2, as amended, carry? Those in favour? Those opposed? Section 2, as amended, carried.

Section 3: NDP motion 7.

Ms. Martel: I move that section 3 of the bill be struck out and the following substituted:

“Scope of practice

“3. The practice of traditional Chinese medicine is the assessment of body system disorders of an individual through traditional Chinese medicine diagnosis and differentiation techniques and prevention and treatment of any diseases or disorders or dysfunction using traditional Chinese medicine therapies to promote, maintain or restore health.”

This particular amendment was given to us in a presentation that was done by Mary Wu, who is the president of the Toronto School of Traditional Chinese Medicine, and I move it at this time.

The Chair: Are there any further questions or comments on NDP motion 7 before the committee?

Mr. Patten: We have some trouble with the language of this, because there is an addition to this. We’re not sure what it means by “diagnosis and differentiation techniques and prevention and treatment of any diseases or disorders or dysfunction.” It seems a little out of at least my understanding and that of some others of traditional Chinese medicine and their examinations and techniques of analysis and assessment being patterns of syndromes and not diseases per se. It’s looking at the energy flow or it’s looking at overactive or underactive activity in the body or cold and heat and things of that nature. So when “differentiation” is used, what’s meant by that?

Ms. Martel: In her notes it says, “Diagnosis and differentiation are the two most important terms and actions for the safe and effective treatment in TCM. There is no such thing in TCM as ‘assessment’ anywhere in our textbooks or our curriculum. The ‘diagnosis’ here is specified for TCM and ‘differentiation’ is unique in TCM.” Secondly, “TCM is famous in disease prevention and health promotion. The scope of practice should include ‘prevention’ as well.” Thirdly, “Most patients come to us with clear western ... diagnosis from their” doctors. “TCM textbooks list the treatment of diseases under the names of western diseases and universities curriculum use the name of the disease according to western medicine. This does not mean that TCM practitioners diagnose or treat western disease using western

medicine. But diseases diagnosed according to western medicine can also be treated with TCM.”

The Chair: Mr. Patten, any further comments? If there are no further questions or comments—Mr. Patten?

Mr. Patten: We’re talking about 3, right? All right. That’s fine.

The Chair: Thank you. We’ll proceed to the vote. All those in favour of NDP motion 7? Those opposed? I declare the motion lost.

Shall section 3 carry? Those in favour? Those opposed? Section 3 carries.

We’ll now proceed to new section 3.1, NDP motion 8.

Ms. Martel: I move that the bill be amended by adding the following section:

“Authorized acts

“3.1 In the course of engaging in the practice of traditional Chinese medicine, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following:

“1. Communicating a diagnosis and differentiation identifying a disease or disorder as the cause of a person’s symptoms according to traditional Chinese medicine.

“2. Performing a procedure on tissue below the dermis or below the surface of a mucous membrane for the purpose of acupuncture and its related procedure.

“3. Setting or casting a simple fracture of a bone or a dislocation of a joint if the member is a qualified traditional Chinese medicine specialist under the supervision of a legally qualified medical practitioner.

“4. Moving the joints of the spine beyond a person’s usual physiological range of motion using a fast, low amplitude thrust.

“5. Administering a substance by injection or inhalation for the purpose of traditional Chinese medicine treatments.

“6. Prescribing, dispensing, selling or compounding Chinese medicines and natural health products.

“7. Ordering a form of energy.”

If I can speak to this?

The Chair: Please.

Ms. Martel: Thank you, Mr. Chair. We know in the bill right now that the government will later make regulations with respect to the use of the “doctor” title. We know that a referral was made to HPRAC in that regard. I believe HPRAC responded at the end of September, but we don’t know the outcome of that. We don’t have the information with respect to what HPRAC has recommended with respect to the “doctor” title.

Having said that, we know that the bill proposes that some traditional Chinese medicine practitioners will be afforded the title “doctor” based on their education, experience etc. As a result of that, it seems to me that if you are giving a health care professional the title of “doctor,” then you also need to be giving them authorization to a number of controlled acts; otherwise, why give them the title of “doctor” in the first place?

So the access to controlled acts that are outlined are those which I believe should be given to those TCM practitioners who will be able to use the “doctor” title, because this would be appropriate given their educational background, their experience, the tradition in terms of how long they have been practising etc. These amendments were put together based on the recommendations of both Mary Wu and Marylou Lombardi, in Marylou Lombardi’s case on behalf of a number of organizations. So I think these will be appropriate authorized acts to be bestowing on an individual who would get the “doctor” title and in getting that title would clearly have an elevated level of education, experience etc.

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The Chair: Any further comments on NDP motion 8?

Mr. Patten: I certainly admire the effort that has gone into this, but I have to say that a number of these things, in my opinion, have nothing to do with traditional Chinese medicine. Some of them may have something to do with chiropractors or other health-related professions. For example, “ordering a form of energy,” using MRIs or CAT scans or those kinds of things, is not my understanding of the approach that TCM offers and the way they would come at doing their assessment or TCM diagnosis, whichever term you want to use. So I think this is putting absolutely too much in pinning down areas of activity that are just too much for that—I think it’s important to keep it simple, to provide some direction. We have a recommendation of our own that we think does that.

Ms. Martel: We have a difference of opinion. That’s why I put more in than the government did, because I didn’t think the government had gone far enough in terms of the controlled acts or the authorized acts that they were providing to doctors of TCM. Don’t forget, we’re not saying that these specific authorized acts would be given to just anyone. Acupuncturists or TCM practitioners, those who would have the ability to carry out these acts, would clearly be those who have the most background, the most educational experience, the most work experience etc. The college itself, with some advice from HPRAC, will be determining exactly those categories of individuals. So it will not be everyone within the TCM or acupuncturist community that would have authority to do this, only those who are the most extremely qualified.

Again, I think if you’re going to give a health professional a title of “doctor,” there are some things that have to flow from that. I just have to say again, if you look at some of the other health care professionals who have a “doctor” title, what they can do in terms of authorized acts is far more extensive than what the government is proposing in this bill. So the amendment was also to reflect what other registered health professionals who have access to the “doctor” title are also permitted to do. I think the government’s scope, frankly, is too narrow and too limited.

Mr. Patten: As you know, the intent of the bill is to set up a college and to provide some recognition, and through that particular process, provide for the safety of

consumers, or patients, or whatever term you’d like to use. Our view is that we would leave it up to the college itself to provide those categories of activity or those areas of specialty or what have you.

Ms. Martel: Chair, may I ask a question to counsel who is here? Right now, if I understand this correctly—you will correct me, of course, if I’m wrong—the authorized acts that different professions have are written right into the legislation. Is that correct, that it’s not done by regulation?

Ms. Henderson: Yes, they’re written into the health-profession-specific acts.

Ms. Martel: So I raise my concern again. Even allowing the college to take a look at this does not mean that it’s going to be put into the act. We would have to wait until the act is opened at some other time, whenever that may be, in order to get it in there. We can’t do this by regulation.

My argument is, if we’re going to follow the same mechanism that has been used to give authorized or controlled acts to other regulated health professionals, then we should be doing that and making it explicit in the act right now, as we do with other regulated health professionals. It would be fine to have that discussion with the college at some later date, but you’re not going to be able to put it in the act at that later date unless you open it up again, and we all know how often that occurs.

The Chair: Any further comments, replies?

Ms. Martel: May I have a recorded vote?

The Chair: Yes. We’ll proceed, then, to the consideration of NDP motion 8. It’s a recorded vote.

Ayes

Martel, Witmer.

Nays

Kular, Leal, Patten, Ramal, Van Bommel.

The Chair: I declare the motion lost.

We proceed now to PC motion 9.

Mrs. Witmer: I move that the bill be amended by adding the following section:

“Authorized act

“3.1 In the course of engaging in the practice of traditional Chinese medicine, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to communicate a diagnosis and differentiation identifying a disease or disorder as the cause of a person’s symptoms according to traditional Chinese medicine.”

If we take a look at the original HPRAC report in 2001, they did consider the controlled acts which the members of the college should have the authority to perform, and they did recommend that a controlled act of communicating a diagnosis be authorized to the new college. This particular bill, of course, doesn’t recognize this in any way, shape or form.

As well, some of the arguments that have been made by Ms. Martel I would agree with. She went into “authorized acts”; we’re referring here to “authorized act.” But if you take a look at the other professions who are entitled to use the word “doctor” under the RHPA, they are also authorized to perform the controlled act of communicating a diagnosis. If you’re not going to allow TCM doctors access to this controlled act, it would be quite inconsistent.

If we take a look at the British Columbia legislation again, they do allow the traditional Chinese medicine practitioner, the acupuncturist and the herbalist to make a traditional Chinese medicine diagnosis identifying a disease, disorder or condition as the cause of signs or symptoms.

Our controlled authorized act is certainly based on the recommendations from Mary Wu, the Toronto School of Traditional Chinese Medicine, who points out that “diagnosis” and “differentiation” are the two most important terms and actions for safe and effective treatment in TCM. As well, we heard from Marylou Lombardi, the president of the Ontario Association of Acupuncture and Traditional Chinese Medicine. Again, the argument was made that all other regulated health professions who have been granted the use of the title “doctor” have been given access to the controlled act of communicating a diagnosis. We heard from the Ontario Acupuncture Examination Committee, Dr. Jia Li, who supports that the controlled act of communicating a diagnosis be authorized to doctors of TCM. And we heard from James Yuan, the president of the Canadian Association of Acupuncture and Traditional Chinese Medicine, who supports access to the controlled act of communicating a diagnosis, thereby giving TCM doctors the rights and privileges to which a doctor is entitled.

Certainly there were many, many people who appeared before us who were supportive of making sure that within this legislation there be an amendment made that would allow for an authorized act to take place.

The Chair: Are there any further comments? Seeing none, we’ll proceed to the consideration of PC motion 9. Those in favour? Those opposed? PC motion 9 is lost.

We proceed now to government motion 10.

Mr. Patten: I’d like to withdraw motion 10.

The Chair: Withdrawn.

Government motion 10.1.

Mr. Patten: We have submitted a new motion, 10.1, and it’s been distributed. I’d like to read it.

I move that the bill be amended by adding the following section:

“Authorized acts

“3.1 In the course of engaging in the practice of traditional Chinese medicine, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following:

“1. Performing a procedure on tissue below the dermis and below the surface of a mucous membrane for the purpose of performing acupuncture.

“2. Communicating a traditional Chinese medicine diagnosis identifying a body system disorder as the cause of a person’s symptoms using traditional Chinese medicine techniques.”

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The Chair: Are there any further comments or questions, concerns?

Ms. Martel: I’ll vote in favour of it because it’s better than what’s in the bill right now, but I still don’t think it goes far enough.

Mrs. Witmer: I would certainly agree. In many respects, this is a combination of our motions number 9 and number 11. However, we do refer to diagnosis and differentiation, which this does not refer to. I would support this because, again, it is an improvement.

The Chair: We’ll proceed, then, to the vote. Those in favour of government motion 10.1? All opposed? Motion 10.1 carries.

PC motion 11.

Mrs. Witmer: I would withdraw that in light of the passage of 10.

The Chair: PC motion 12.

Mrs. Witmer: I move that the bill be amended by adding the following section:

“Authorized act

“3.3(1) In the course of engaging in the practice of traditional Chinese medicine, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to prescribe, dispense or compound Chinese herbal medicines and natural health products.”

Again, if we take a look at the HPRAC recommendations of 2001 where they consider the controlled acts which the college should have the authority to perform, they did recommend that they be authorized this controlled act of prescribing, compounding or dispensing natural health products. So I think, based on the research that they had done and the information provided, this is their recommendation.

Also, if you take a look at the British Columbia act, again, the traditional Chinese medicine practitioner or the herbalist may prescribe those Chinese herbal formulae listed in a schedule to the bylaws of the college.

We also heard from the International Scalp Acupuncture Research Association of Canada, who support that a member be authorized to prescribe, sell and compound herbs and natural herb products.

We heard from Dr. Jia Li of the Ontario Acupuncture Examination Committee, who supports that they be authorized to, again, prescribe, dispense, sell and/or compound drugs and natural products that are consistent with TCM practice.

Of course, we heard from Mary Wu. We got some excellent advice from the Toronto School of Traditional Chinese Medicine, who, again, did speak to this particular issue.

Again, I think we need to take that into consideration, and I would move this motion.

The Chair: Any further comments?

Ms. Martel: I agree with what Ms. Witmer has said. We have also moved it in our motion in terms of authorized act. I had a question, though. In the MPP report that was done, was there a recommendation made around herbal medicines?

Mr. Patten: No, because at the time, discussions with the federal government, under which natural products are identified—frankly, this isn't necessary anymore. They have said that the natural products that are there—and we've said, the bill says—TCM has within the scope of their practice. Therefore, they're free to use the natural products. So the bill was intentionally aligned with the federal legislation so that this complies with that and we don't have to worry about that problem.

Ms. Martel: Can I ask a further question? If I look at the scope of practice that's in the bill right now, how does it make it clear that a doctor of TCM would be allowed to do this?

Mr. Patten: Because if you interpret—this isn't expounded upon in five sentences, but if you think of each one, “The practice of traditional Chinese medicine is the assessment of body symptom disorders through traditional Chinese medicine techniques and treatment using traditional Chinese medicine therapies”—so there's an acknowledgement of traditional Chinese therapies—“to promote, maintain or restore health.”

That's to be understood in that fashion. So when you talk about herbal treatments, when you talk about massage treatment or any of the others, we leave it to the college to make those differentiations and to identify those specialties and standards that are required to be met in order to be qualified to provide those therapies.

Ms. Martel: But the scope of practice as it currently stands doesn't limit that ability to prescribe, dispense, sell or compound Chinese medicines and natural health products only to doctors of traditional Chinese medicine. I'm assuming we're going to want a limitation, because not everybody who's a TCM practitioner, I suspect, would be qualified to actually prescribe and dispense. Some of the products we're talking about could have some really serious consequences, so I'm assuming this would be something you would want a doctor to do. But that doesn't really match up to the scope of practice, which, as you've described it, would essentially allow anyone who's a TCM practitioner to be able to do that. I'm not sure that's where we want to be.

Mr. Patten: There were some discussions when we had our MPP review and some of our hearings that they had identified one or two particular herbs. I'm not sure if the feds have identified those specifically; certainly other schools have. Those who do training, I would imagine, would identify that in certain circumstances, certain combinations are perhaps not a wise thing to utilize. But the way it stands right now with the federal legislation, frankly, this is all over-the-counter stuff that is recognized and accepted as being available to the consumers of Canada. So it's not required to limit that.

The intention of the bill is to provide a sense of the scope, not to provide so much limitation that you freeze

in time your activity to only these areas. As you know, things evolve over periods of time; we know that from a variety of professions. New techniques are developed, improvements are made, new understandings take place etc. So the intent is to provide a sense of the scope, but not to be so limiting that you tie their hands or freeze in time what's eligible for the practitioners.

Ms. Martel: Can I just add this? I don't see it as a restriction or a limitation; I see it as a matter of public safety. I guess I'm not convinced, from the discussions that I've had with a number of members of the traditional Chinese medicine community who put this forward as being necessary to be a controlled act so that not everybody had access to it, that part of the reason you wanted to do this was to make sure that it was a doctor who had that ability, that it was for a matter of public safety, that it was neither appropriate nor safe in some circumstances to have this being done by just anybody. So I saw it in the context of making sure that someone who had this authority and this right was doing so in the best interests of public safety.

Mr. Patten: I would agree with that. I think the bill addresses that in section 10, in (a) and (b)—particularly (b), which is more related to your particular issue—where the college does get guidance:

“(a) prescribing standards of practice respecting the circumstances in which traditional Chinese medicine practitioners shall make referrals to members of other regulated health professions;

“(b) prescribing therapies involving the practice of traditional Chinese medicine, governing the use of prescribed therapies and prohibiting the use of therapies other than the prescribed therapies in the course of the practice of traditional Chinese medicine.”

But we're leaving the answering of those guidelines to the qualifications of the college, which is certainly in a better position than me to set them out.

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Mrs. Witmer: Are you suggesting, then, that you don't believe this is necessary?

Mr. Patten: That's correct.

Mrs. Witmer: I guess I would agree. I think this is an issue of safety. Although we were told that most of the Chinese herbal medicines are safe and have a rather mild action, we also know and were certainly informed by those who came before us that some of them are very potent, some of them are very toxic. They are effective and safe when used properly, but they also could cause strong reactions or aggravate conditions or cause adverse effects, even cause serious damage to the body or kill if used improperly. And that's from Mary Wu of the Toronto School of Traditional Chinese Medicine. She made the recommendation that these herbal medicines should be controlled but available to patients through prescription by qualified practitioners only. Based on her advice and the advice of others, and based on previous HPRAC recommendations, I would choose to leave this as is.

Mr. Patten: May I respond to that, Mr. Chair?

The Chair: Please.

Mr. Patten: Two things: One, I don't think it's necessary. In fact, it could have the unintended consequence of saying that if these things can only be done by prescription, all of those over-the-counter products that people go to without referral from any kind of a person would now not be able to be utilized. It goes contrary to the decision that's been made by the federal government already. Acknowledging your concern, that's why in the act it says that the colleges themselves have to look at the prohibition of the use of certain therapies, of prescribing therapies, other than what is there, and in defining that, I think they'll take that into consideration. This was certainly the indication we had when we consulted with others in other jurisdictions.

Ms. Martel: I don't have the federal act in front of me, so I can't respond to that as to whether or not everybody can just sell this over the counter now and the federal government says that's okay. I would hope that the federal government would see some issues around public safety as well with some of these herbal medicines. Granted, for most people using it properly or giving it to patients properly, there's not a problem. But we did hear that some of this stuff is pretty toxic. So I have to take your word that that's what the federal government has said, although I would have thought they would have had a similar concern about some limitations, very much from the perspective of public safety, especially to the more potent and toxic medications that we're talking about.

The Chair: Are there any further questions or comments? Seeing none, we'll proceed to the vote. Those in favour of PC motion 12? Those opposed? I declare PC motion 12 to have been lost.

We now move to consideration of PC motion 13.

Mrs. Witmer: I move that the bill be amended by adding the following section:

"Standard of practice for acupuncture

"3.4 It is a condition of every member's certificate of registration, and the certificate of registration of every member of a regulated health profession, that the member, in performing acupuncture, at a minimum comply with the 'Guidelines on Basic Training and Safety in Acupuncture' of the World Health Organization, as amended from time to time."

We heard about this minimum from pretty well everybody who appeared. However, since we submitted our amendment we got this letter from the minister, and we now don't quite know what's happening. He only says that he intends to seek further advice; he doesn't indicate that he's referring it to HPRAC to take a look at these minimum standards of practice. But we do believe it's important that there be an acknowledgement of the need for a minimum of training in acupuncture. I think Ms. Martel pointed out that different health professions currently have different standards, and this is obviously not something you can do without some sort of a minimum standard.

We heard 50 individual submissions from registered massage therapists, physiotherapists and chiropractors,

who all asked that Bill 50 enforce minimum standards of training for all professions who practise acupuncture and that those standards be no less than the 200 hours of training, citing the international recommendation of the World Health Organization's 1999 document. I think that shows you how significant an issue this was for people who appeared before the committee.

We also heard that the Canadian Memorial Chiropractic College has offered a clinical acupuncture program that exceeds the standards set by the WHO in 1999. We heard from the Ontario Chiropractic Association that they receive postgraduate acupuncture training from a variety of sources, and there are about 650 chiropractors who are certified graduates of acupuncture training. It does meet the WHO guidelines. We heard from naturopathy. They require all of their registrants to have a minimum of 220 hours. We heard also from the Ontario Association of Acupuncture and Traditional Chinese Medicine, who said that there should be a minimum standard for the practice of acupuncture.

Certainly this was a most significant issue, and I do believe that there needs to be a minimum standard put in place.

Mr. Patten: I have to agree with the concern and what did come forward in terms of what was identified. I heard it too and I agree completely.

The structure of the act, though: For you to miss this vehicle itself—and I think the minister may recall. Were you the health minister when—no.

Ms. Martel: I was in the government but I wasn't the minister.

Mr. Patten: You may recall that we can't legislate across the board. This impinges upon every single regulated profession and it can't be done. It's verboten for us to do that with that particular act, which was one of the reasons, frankly, why the letter is there. In fact, there's evidence, as you have pointed out, that says—a number of the colleges have already responded. Even when the nurses were here, they said, "Listen, if this act goes through and there's pressure for some minimum standards, we'll look at that." In fact, most of them are looking at this because they're aware of this particular bill.

I agree with the intent. Frankly, I wouldn't mind being in a position to be able to say, "Do you know what? No matter what you're doing, 200 hours for everybody." But we can't do it under this particular act. The only thing we can do is encourage and ask them to revisit, to take a look at their minimum standards. We want to promote minimum standards. What should they be in your particular circumstances, given, within your scope of practice, how you might utilize aspects of acupuncture or whatever? I agree with the intent, but in this one we can't technically do it, legally.

Mrs. Witmer: I understand what you're saying. The ministry must have recognized that this was going to be an issue that would be raised. I wish that there had been some consultation and some referral to HPRAC prior to the introduction of this bill, because, until such time now

as there is a referral to HPRAC, which we don't even know is going to happen, people are going to be in limbo. There isn't going to be a minimum standard. We can pass this bill, but there's going to be a lot of uncertainty until such time as HPRAC is in a position to receive a referral, analyze this particular issue and make a decision as to how it can be satisfactorily resolved. And really, at the end of the day it needs to be resolved because this is for the protection of the public. Without it, there is no minimum standard, currently.

1700

Ms. Martel: I'd just add that we all heard the concerns, and I think we all share the concerns about what is the minimum standard of practice that you have to have before you provide acupuncture. I'd say to the parliamentary assistant that I would perhaps feel better if I had a clearer sense of what the minister is going to say to HPRAC. Is the minister going to give a strong indication to HPRAC, either through the course of the public hearings or through his own discussions with whomever? Very clearly the response back was that, for a matter of public safety, for the regulated health professions that commonly practise acupuncture now and that are going to be outlined in the schedule that comes later in the government's amendment, the minister feels strongly that each of those should have some minimum standard that's going to be developed. I apologize to research if I missed it, but I don't think we got back from research information about what the standards of practice for acupuncture were for the various colleges. We certainly heard what the college of nurses had to say. For example, when we contacted the royal college to find out the situation for dentists, as part of my remarks on second reading, we were clearly told that there isn't a standard: "This is part of our controlled act and we don't have a standard."

I would be much more comfortable if I could see that a referral to HPRAC was strongly endorsing standards, even for those colleges that just believe they can do that as part of their standard of practice. There has to be some specific training in acupuncture, regardless of what regulated health profession you are, before you go out and do that. I feel like we're operating at a bit of a loss, because we have some indication that the minister is going to do something, but we don't know what and we don't know when. We certainly don't know how strong the minister's sentiment is going to be about a need for minimum standards. We certainly heard it, but I don't know what he's going to say.

Mr. Patten: I think it has to be dealt with as well. We tried to deal with that in another section here because we couldn't do it in this one. I think when we get to section 18, we have some recommendations there that precisely deal with, if someone is going to use acupuncture, for example, the fact that they have to meet the minimum standards of their college. The only thing we cannot do here is tell all of those colleges, "Hey, listen. You all have to have 200 hours." We can't do it. We want to move them as far as we possibly can to be as responsible

as possible, which I think they will be, by identifying that, "If this goes through, you're going to have to have some standards. You're going to have to present those and you're going to have to justify them. What are those?"

There may be some variance, but I would point out that even the World Health Organization acknowledged that there may be some variance between different health practitioners by virtue of the usage, which may be quite limited in some instances and in others a bit more elaborate.

Ms. Martel: May I ask one further question on this? Is there a mechanism whereby the minister has to approve those minimum standards?

Mr. Patten: Any regulations that are developed have to be put forward and reviewed by the minister and approved by the Lieutenant Governor in Council.

Ms. Martel: May I ask a further question? Right now the standards of practice, for example, by the chiropractic college have to be approved by their own governing body, and we know physiotherapists are doing that as well. It was not my understanding, however, that once approved by their individual colleges, there was then a second step whereby the minister had to approve whatever the board put forward.

I'm trying to get a clear understanding of the process in place to understand very correctly whether or not somehow there is a difference in this legislation whereby those colleges would actually have to submit regulations to the minister outlining what their standard of practice is going to be for members who want to practise acupuncture. Is that going to be in this bill? I don't think it's in the other regulated health professions legislation right now. I don't think they have to do that.

Mr. Patten: Yes, they do; it's my understanding they do. That's right. If they're regulations, they do. It would seem to me that if the college is going to put forward something in regulations, they would go to their members first, have a process of approval there to be able to propose, "This is what our regulations will be," and then it would go to the minister and from there to cabinet.

Ms. Martel: But I think the key is "if." Let me get this straight. Let me use chiropractors, because that's the clearest example for me. They came; they have been looking at a standard of practice for their members who want to practise acupuncture. They will probably agree, as a council, to move to the WHO guidelines. Is it a requirement, then, for the college to submit those guidelines to the minister for approval before the college authorizes its members to undertake acupuncture? Is that a requirement?

Ms. Henderson: The colleges have the authority to set standards of practice and qualifications for many of the innumerable procedures that their members may perform in accordance with the RHPA and their health-profession-specific acts. If it's a regulation that the college is putting forward in terms of qualifications or standards of practice, Mr. Patten has outlined correctly the process. If it's a policy or a guideline, it does not

need to be submitted to the ministry for review. However, normally those policies or guidelines are public documents on the college's website and may be accessed there by the members. They are evidence of a standard of practice that the college would expect their members to reach. But there are, as you can imagine, innumerable processes and procedures that health care professionals who are regulated perform every single day. You'll see in the government's motion upcoming on subsection 18(2) a requirement for colleges to set qualifications for members who will be performing acupuncture within the scope of practice and standard of practice of their profession.

Ms. Martel: Okay, but I go back to this point. You just finished saying that if it's a regulation, then of course it has to be approved by the LG. I understand that. But you also said, if it's involving policy and guidelines, that's something that doesn't have to be dealt with by the government. I understand that too. My question would be, how do we ensure that a minimum standard of practice for acupuncture becomes a regulation that that college has to submit to the government for approval? As I understand what you're saying, that's the only way the government can be clear that there is a minimum standard. It seems to me that's the only authority you have to ensure that happens.

Ms. Henderson: The RHPA gives the ability to college councils to make regulations respecting registration requirements, standards of practice, qualifications and so on for their members. Each college has been given the mandate to set those standards, to set those qualifications. It is within the purview of the college to set those standards and regulations, to set standards of practice in regulations or otherwise. They have been given the authority to do that under the Regulated Health Professions Act. If you're asking what the government can or should do to enforce a requirement, there are extraordinary powers of the minister set out under provisions in the RHPA. Whether or not this is the appropriate exercise of that power is a difficult question.

Mr. Patten: Anyway, it can't be done this way.

1710

Mrs. Witmer: Well, you know, I understand that it can't be done this way. However, you haven't told us how it can be or will be done or how the public can be assured that those people who are performing acupuncture have had some sort of minimal level of training. I guess that's what is worrisome.

Mr. Patten: We dealt with it, we feel, in section 18, which is motion 26. We're jumping ahead to it, but I think it answers the question that you had. It says, "A person mentioned in subsection (2) or (3) is exempt from subsection 27(1) of the act for the purpose of performing acupuncture only if he or she has met the standards and qualifications set by the college or the Board of Directors of Drugless Therapy, as the case may be." So that confines, it seems to me—I may need to get a legal read on this. Whether it's regulation or not—guidelines, bylaws; call it what you want—we're saying they have to

have standards, requiring each college to have standards, before someone can utilize a form or modality of acupuncture. They will be held to account for that, and they are required, I think, by the act to also have disciplinary and compliance committees—I don't know what the terms are—to oversee that. The practitioners will be accountable for that, so if anything happens, they've gone against the regulations, as it were, or whatever it is, they've breached what was recommended by their own college, and therefore they would be susceptible to discipline.

The Chair: Are there any further questions, comments, queries, concerns, debates? Fine. We'll proceed now, therefore, to consideration of PC motion 13. Those in favour? Those opposed? I declare PC motion 13 to have been lost.

We'll proceed now to PC motion 14.

Mrs. Witmer: I would withdraw this motion because our first motion was defeated.

The Chair: PC motion 14 is withdrawn.

NDP motion 15.

Ms. Martel: I move that section 4 of the bill be struck out and the following substituted:

"College established

"4. The college is established under the name College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario in English and l'Ordre des praticiennes et praticiens en médecine traditionnelle chinoise et des acupunctrices et acupuncteurs de l'Ontario in French."

Le Président: Merci. Commentaires et débat?

Mr. Patten: I am advised by legislative counsel that the term—first of all, it's inaccurate in the use of the term. It is not necessary to have both masculine and feminine in the French title; it can suffice to have "praticiens en médecine traditionnelle chinoise...." So it's a technical thing.

Le Président: Merci. Plus de discussion sur masculin ou féminin?

M^{me} Martel: Je veux avoir tous les deux.

The Chair: If there are no further questions or comments, we'll proceed to the consideration of the vote. NDP motion 15: Those in favour? Those opposed? I declare NDP motion 15 to have been lost.

Government motion 16—Ms. Martel.

Ms. Martel: I'm sorry that I didn't catch this. Can I ask then why, in the government bill as it's currently written, it uses both masculine and feminine for practitioners in section 4?

The Chair: You may indeed ask.

Ms. Martel: So I'm asking.

The Chair: Ms. Martel's question is before the floor.

Ms. Martel: Page 2, section 4 of the bill right now, also uses "des praticiennes et praticiens." So you're changing that because you've been told that you can just use the masculine?

Mr. Patten: That's correct.

Mr. Ralph Armstrong: May I be so bold?

Ms. Martel: Yes, sure.

Mr. Armstrong: Ralph Armstrong, legislative counsel office.

Our French team now says they wish they hadn't done it that way originally.

The Chair: Sorry; could you repeat that?

Mr. Armstrong: Our French team now says that they regret having used both terms in the original. It's not their usual practice in these things, and they want to take this opportunity to use their standard.

Ms. Martel: Thank you.

Mr. Armstrong: And if smacks on the head can be transcribed, I would be grateful. Apologies to the committee.

The Chair: We'll proceed now to government motion 16.

Mr. Patten: We believe that this is the accurate French terminology and consistent with the other college usage.

The Chair: You need to read it into the record, Mr. Patten.

Mr. Patten: I move that section 4 of the bill be struck out and the following substituted:

"College established

"4. The college is established under the name College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario in English and Ordre des praticiens en médecine traditionnelle chinoise et des acupuncteurs de l'Ontario in French."

The Chair: If there are any further questions, comments, self-flagellation, debate? None? We'll proceed then to the vote. Those in favour of government motion 16? Those opposed? I declare government motion 16 to have carried.

Shall section 4, as amended, carry? Those in favour? Those opposed? I determine that that is carried.

We'll proceed now to NDP motion 17.

Ms. Martel: I move that subsection 5(1) of the bill be amended by adding the following clause:

"(c) at least one and no more than two persons selected by the Lieutenant Governor in Council who are faculty members of educational institutions of traditional Chinese medicine."

The particular section right now lists who will be members of the new council once traditional Chinese medicine and acupuncture is regulated. I agree with what appears in the bill right now, but I am suggesting an addition so that at least one or two of those council members be persons who are already involved in the educational field with respect to traditional Chinese medicine so that the council will cover off not only people who are practitioners and public members, but one or two persons who also operate educational institutions where traditional Chinese medicine is taught. I just think that would be a valuable addition to the council in terms of its decision-making processes.

The Chair: Any further commentary on NDP motion 17?

Mr. Patten: It is within the purview of the college to set out the nature of its representation, and surely this

would be one of the areas. It seems to me that if you go down this road, then you're going to have to say, "Well, we should also have somebody who is a practitioner; we should have men and women; we should...." By the time you get through it, you'll have prescribed everything. Our view is that that should be left up to the college.

The Chair: Thank you, Mr. Patten. We'll proceed now to consider the vote on NDP motion 17. Those in favour? Those opposed? I determine that NDP motion 17 is lost.

Shall section 5 carry? Those in favour? Those opposed? Section 5 is carried.

There are no motions before the committee for section 6. We'll proceed directly to the vote. Shall section 6 carry? In favour? Opposed? Carried.

We now move to the consideration of PC motion 18.

Mrs. Witmer: I move that subsection 7(1) of the bill be struck out and the following substituted:

"Restricted titles

"(1) No person other than a member shall use the titles 'traditional Chinese medicine practitioner', 'acupuncturist' or 'traditional Chinese medicine herbalist', a variation or abbreviation or an equivalent in another language."

Basically, this is an expansion of the restricted titles to include the traditional Chinese medicine herbalist. If we take a look, again, at British Columbia, they do include TC herbalists. Also, HPRAC, in 2001, did recommend that those three titles that I've just mentioned be as such. And of course, we also heard from the Toronto School of Traditional Chinese Medicine and individual presenters that restricted titles for members of the new college should include "TCM herbalist." Without the herbalist title, this could cause a problem to those who are currently practising herbal medicine only, without doing acupuncture. Again, it talks to the issue of safety. We talked about the Chinese herbal medicines, the fact that some of them are toxic and potent. So obviously these herbs should be used as prescription only by qualified TCM practitioners, TCM herbalists and doctors of TCM.

1720

The Chair: Any further comments? Seeing none, we'll proceed to the vote. Yes, Mr. Patten?

Mr. Patten: I was just going to add to that. I think the spirit of that is in 7(2), that the college can have and will have specialties which they can protect and enforce. I think the next subsection deals with that concern that's identified.

I'm also notified that while, for example, the Ontario College of Physicians and Surgeons protects the title of "doctor," there are subspecialist areas that they identify—oncologists or whatever it may be—that have the same challenge. Some of those are not protected and some are. But it's basically the overall doctor of medicine or surgeon.

The Chair: Thank you, Mr. Patten. We'll proceed now to the vote. Those in favour of PC motion 18? Those opposed? I declare PC motion 18 to have been lost.

NDP motion 19.

Ms. Martel: I move that section 7 of the bill be struck out and the following substituted:

“Restricted titles

“7(1) No person other than a member shall use the titles ‘traditional Chinese medicine practitioner’, ‘tuina massage therapist’, ‘traditional Chinese medicine herbalist’ or ‘acupuncturist’, a variation or abbreviation or an equivalent in another language.

“Representations of qualification, etc.

“(2) No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a traditional Chinese medicine practitioner, tuina massage therapist, traditional Chinese medicine herbalist or acupuncturist or in a specialty of traditional Chinese medicine.

“Definition

“(3) In this section,

“‘abbreviation’ includes an abbreviation of a variation.”

This was moved for the same reason that Ms. Witmer has already outlined. We also added in ours a restricted title of tuina massage therapist, based, again, on the recommendation of a number of the presenters before the committee, particularly Mary Wu. We know that the HPRAC recommendations in 2001 went further than what the government is doing now. I think we should at least be on the ground of what HPRAC recommended in 2001 and actually moving further with respect to tuina massage therapist as a title that should be protected and to ensure that no one holds themselves out as someone who can perform this important health care activity without truly being qualified to do so.

So it is both a matter of elevation of members of the profession, respecting their qualifications, and also a very serious issue of public safety in terms of ensuring that only people who have the appropriate qualifications are allowed to practise and are allowed to hold themselves out in this regard in the public.

The Chair: Any further questions or comments? Seeing none, we’ll proceed to the vote in consideration of NDP motion 19. Those in favour? Those opposed? I declare NDP motion 19 to have been lost.

Shall section 7 carry? None opposed. Section 7 carries.

With the committee’s will, we’ll do block consideration of sections 8 to 13, inclusive, seeing that there are no motions brought forward.

Ms. Martel: Excuse me. I have a question with respect to section 10. I apologize for this, but I do have also a potential amendment, depending on what answer I can get. On section 10, it was brought to my attention by several groups that—

The Chair: Ms. Martel, with your indulgence, if we might, for procedural purposes, go through 8 and 9 first, which we can consider as a block, if there’s no objection. Shall sections 8 and 9 carry? Those in favour? Those opposed? I declare them to have carried.

Ms. Martel, the floor is yours.

Ms. Martel: Let me ask this question, then. A concern was brought to my attention by a number of people in the

traditional Chinese medicine community that this item with respect to mandatory referrals doesn’t appear in other regulated health professions and that it would seem that TCM practitioners are being treated differently under regulation in this regard.

I did take a look at a number of the regulated health professions to see what was already in their acts, and I do see that, for example, under the Dental Hygiene Act in part 5 around professional misconduct, it does say, for example, that it is an act of misconduct to fail to refer a client to a qualified medical or dental practitioner where the member recognizes or ought to have recognized a condition which required medical or dental examination.

So I looked at a number of acts and saw areas where, under the misconduct section, it would be an act of professional misconduct if you didn’t make a referral. What I don’t know is if there is a similar regulatory provision which allowed that to happen in the other acts, or if this is something that’s quite different. If you can explain that to me, I’d appreciate it.

Mr. Stephen Cheng: Stephen Cheng, senior policy analyst with the Ministry of Health and Long-Term Care.

If your question is regarding whether the council must make a regulation prescribing standards of practice respecting referrals, the answer is no. The college may make regulations if they determine that it’s appropriate to develop a standards-of-practice regulation involving referrals to members of other health professions.

If we take a look at British Columbia, we do have in their legislation acupuncturists who must refer on. However, in the legislation we currently have, that’s currently in Bill 50, we leave it up to the college to determine whether or not that’s appropriate.

Ms. Martel: I didn’t make myself very clear, and I apologize for that. Does a similar section to section 10 appear in the other acts with respect to the regulated health professions?

Mr. Tim Blakley: I’m Tim Blakley. I’m the manager of the regulatory programs unit.

The Nursing Act contains certain provisions with respect to mandatory referral and consultation by members of the extended class of nurse practitioners. When it comes to communicating a diagnosis, members of that particular class of registration of registered nurses must abide by certain standards with respect to communicating a diagnosis. In other words, there are certain standards about consultation and referral, and that’s set out in the Nursing Act itself.

Ms. Martel: It’s set out in the Nursing Act, not under the discipline section but under the controlled acts section?

Mr. Blakley: Within the controlled acts section.

Ms. Martel: So in your opinion, it is not out of line or not inconsistent with at least this act to have this provision?

Mr. Blakley: It’s a similar concept. In this case, it’s actually a discretionary power for the council as to whether or not they make these regulations. In respect of

the extended class for registered nurses, it's mandatory that they establish a standard and make a regulation.

Ms. Martel: So regarding the concerns of some that this is different than what is happening with other regulated health professions, the example the ministry would have to use is the registered nurse extended class as an example where this also appears in the legislation.

Mr. Blakley: It's analogous, yes.

Ms. Martel: All right. Thank you.

1730

The Chair: Are there any further questions or comments on NDP motion 19—actually, on section 10. We'll proceed to the individual consideration of section 10. Shall section 10 carry? Those in favour? Those opposed? Carried.

And again, with the committee's will, we'll consider as a block sections 11 to 13. Shall sections 11 to 13, inclusive, carry? Those in favour? Those opposed? I declare them—Ms. Martel?

Ms. Martel: I have another question.

The Chair: Sure. What section, Ms. Martel?

Ms. Martel: On section 12.

The Chair: Okay. We'll proceed, then, to the consideration of section 11. Shall section 11 carry? All opposed? Section 11 carries.

Ms. Martel, the floor is yours.

Ms. Martel: Thank you, Chair. I have another question. This has to do with a concern that has been raised by me about how clear it is that on the day that some of these provisions go into force—and I understand that section 12 goes into force and then the other sections go into force at a date later named by the LG. I understand that. The immediate question was, with section 12 going into force when the bill is passed, what difficult position, if any, those who are currently providing traditional Chinese medicine and acupuncture would be put in. The sense was that once this section went into effect, current registration or licence holders may be in difficulty in terms of continuing to practise.

The reference that I was given was that transitional provisions with respect to specific professions were included in some of the 1991 legislation; for example, chiropractors. There was a specific transitional section that said that if you were practising under the Drugless Practitioners Act before, you still could continue to practise as you transitioned to the Chiropractic Act. Now, the distinction may be that these practitioners were already regulated under some act, so that is why it's not necessary in this act to have a similar provision. If I could get some clarification, that would be great, because it's certainly a concern that has been raised with me. There was also a specific amendment that would cover that off if it needs to cover that off.

Mr. Patten: My understanding is that it will have no effect on anyone at the moment. It will only have an effect when the transitional council—which, by the way, will carry and have the powers of a full council. But it's when the council has done its work, is in place and has its

regulations ready to go. It would mean that until that happens, it's business as usual.

Ms. Martel: The difference between this act and those transitional sections which clearly stated that in the others—can you just put that on the record for me, please?

Ms. Henderson: You were accurate in your analysis that those deeming provisions were in respect of practitioners who were already regulated under the old scheme, whether it was the Health Disciplines Act or what have you, so that they were then being switched over to the Regulated Health Professions Act.

However, in the case of the new colleges—dietitians, for example—those new colleges would have been in the same position as this new college will be in on royal assent. Mr. Patten has accurately stated the situation for TCM practitioners, that they may continue until such time as the transitional council has in place their new registration requirements and grandparenting provisions, what have you, whatever the transitional council decides and determines is appropriate.

Ms. Martel: Thank you.

The Chair: We'll proceed, then, to the consideration of section 12. Those in favour? Those opposed? Section 12 carries.

Any debate on the consideration of section 13, for which we have no motions brought forward? Proceeding directly with the vote, those in favour of section 13? Those opposed? Section 13 is carried.

Section 14: government motion 20.

Mr. Patten: I move that section 14 of the bill be struck out and the following substituted:

“Drug Interchangeability and Dispensing Fee Act

“14. The definition of ‘drug’ in subsection 1(1) of the Drug Interchangeability and Dispensing Fee Act is repealed and the following substituted:

“‘drug’ means a drug as defined in the Drug and Pharmacies Regulation Act, and includes any substance designated as an interchangeable product before section 15 of the Traditional Chinese Medicine Act, 2006 came into force; (‘médicament’).”

Essentially, this is a technical change. It essentially deals with the numbering in the Drug Interchangeability and Dispensing Fee Act.

The Chair: Any further questions, comments? If not, we'll proceed to the vote. Those in favour of government motion 20? Those opposed? I declare government motion 20 to have carried.

Shall section 14, as amended, carry? Those in favour? Those opposed? Carried.

There are no motions brought forward, so we'll proceed directly to the vote on section 15. Those in favour of section 15? Those opposed? Section 15 carries.

We'll now proceed to section 16: government motion 21.

Mr. Patten: I move that section 16 of the bill be struck out and the following substituted:

"Ontario Drug Benefit Act

"16. The definition of 'drug' in subsection 1(1) of the Ontario Drug Benefit Act is repealed and the following substituted:

"'drug' means a drug as defined in the Drug and Pharmacies Regulation Act, and includes,

"(a) any substance designated as a listed drug product before section 15 of the Traditional Chinese Medicine Act, 2006 came into force, and

"(b) any substance that was supplied under this act by virtue of section 16 before section 15 of the Traditional Chinese Medicine Act, 2006 came into force; ('médicament')."

For the same reason: a technical change dealing with renumbering in the Ontario Drug Benefit Act.

The Chair: Any further questions on government motion 21. Seeing none, we'll proceed to the vote. Those in favour of government motion 21? Those opposed? I declare government motion 21 to have carried.

Shall section 16, as amended, carry? Those in favour? Those opposed? Section 16, as amended, carries.

We'll now proceed to section 17: PC motion 22.

Mrs. Witmer: In light of what's gone before, I would withdraw this motion.

The Chair: PC motion 22 is withdrawn.

NDP motion 23.

Ms. Martel: I move that subsection 33(2.1) of the Regulated Health Professions Act, 1991, as set out in subsection 17(1) of the bill, be amended by striking out "College of Traditional Chinese Medicine Practitioners of Ontario" and substituting "College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario."

The Chair: If there's no further commentary, we'll proceed to the vote. Those in favour of NDP motion 23? Those opposed? I declare it lost.

Government motion 24.

Mr. Patten: I move that section 17 of the bill be struck out and the following substituted:

"Regulated Health Professions Act, 1991

"17.(1) Section 33 of the Regulated Health Professions Act, 1991 is amended by adding the following subsection:

"Same

"(2.1) Subsection (1) does not apply to a person who is a member of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario and who holds a certificate of registration that entitles the member to use the title 'doctor.'

"(2) Schedule 1 to the act is amended by adding the following:

Traditional Chinese Medicine Act, 2006	Traditional Chinese Medicine
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This inserts a new name of the college into the bill. Essentially, in order to deal with the French, we have to deal with it in English, so that the translation could be compatible.

The Chair: Are there any further comments or questions on government motion 24?

Ms. Martel: So the translation is going to appear when the bill is reprinted? Because it doesn't appear under section 17 right now. I'm not clear what the necessity for the change is. Ralph?

1740

Mr. Armstrong: With the committee's indulgence, yes, it will appear in the French translation. Also, this is necessary in the English, for the same reason as Ms. Martel's motion, to put in the new English name of the college. So it's just drafted a bit differently to combine the two issues: the new name of the college in English and the preferable translation of it in French. So it would have to be done in any case, just in a different format.

Ms. Martel: What's the difference between 23 and 24 except for sub (2) on government motion 24?

Mr. Armstrong: As you'll note, the government motion includes the reference to sub (2), which coincides with the—

Mr. Patten: The numbering is wrong at the beginning. It's got, "Traditional Chinese Medicine Act, 2005."

Mr. Armstrong: That could be changed editorially, but it helps clean things up to put in the title as it will appear, with "2006." Also, this will enable the preferred French translation of the short title to appear throughout, as part of the head-smacking earlier referenced. So there is a combination of technical factors coming together.

The Chair: Thank you, Mr. Armstrong.

We'll proceed now to the vote. Those in favour of government motion 24? Those opposed? I declare government motion 24 to have carried.

Shall section 17, as amended, carry? Those in favour? Those opposed? I declare that section, as amended, to have carried.

Section 18: NDP motion 25.

Ms. Martel: I move that subsection 18(2) of the bill be struck out and the following substituted:

"(2) Section 8 of the regulation is amended by adding the following subsections:

"(2) A person who is a member of the following colleges is exempt from subsection 27(1) of the act for the purpose of performing adjunct acupuncture in accordance with the standard of practice of the profession, within the scope of practice of the profession, and in accordance with the regulations on the minimum standards to safely perform adjunct acupuncture as established by the Lieutenant Governor in Council and enforced by the college:

"1. The College of Chiropractors of Ontario.

"2. The College of Chiropractors of Ontario.

"3. The College of Massage Therapists of Ontario.

"4. The College of Nurses of Ontario.

"5. The College of Occupational Therapists of Ontario.

"6. The College of Physicians and Surgeons of Ontario.

"7. The College of Physiotherapists of Ontario.

"8. The Royal College of Dental Surgeons of Ontario.

"9. Any other college named in an order of the minister and published on the website of the Ministry of Health and Long-Term Care.

"(3) A person who is registered to practise under the Drugless Practitioners Act by the Board of Directors of Drugless Therapy is exempt from subsection 27(1) of the Regulated Health Professions Act, 1991 for the purpose of performing adjunct acupuncture in accordance with the practice of the profession and in accordance with the regulations on the minimum standards to safely perform adjunct acupuncture as established by the Lieutenant Governor in Council and enforced by the board.

"(4) A person is exempt from subsection 27(1) of the act for the purpose of performing adjunct acupuncture if the acupuncture is performed as part of an addiction treatment program and the person performs the acupuncture within a health facility in accordance with regulations on the minimum standards to safely perform adjunct acupuncture as established by the Lieutenant Governor in Council.

"(5) Any person mentioned in subsection (2), (3), or (4) who was legally practising adjunct acupuncture immediately before this subsection came into force is not required to comply with the standards mentioned in those subsections until two years after this subsection comes into force.

"(6) In this section,

"adjunct acupuncture" means a procedure on tissue below the dermis for the purpose of acupuncture pain relief in conjunction with other modalities such as western medicine, physiotherapy and chiropractic adjustment according to human anatomy and physiology;

"health facility" means a facility governed by or funded under an act set out in the schedule."

This is our attempt to deal with the concerns that were raised about section 18, which we are all very much aware of. What we used was a schedule that referenced those colleges right now that the ministry had advised us by letter were the ones that, within their scope of practice, the ministry believed could practise acupuncture. That was in response to a question that I had raised during the course of the public hearings. So we have listed the eight that appeared in the government's memo back to members of the committee. That's the first thing, how we arrived at the eight. Clearly, this would limit acupuncture to members of these colleges.

Part 9 would allow another college to make their case to the government at some point in time in the future as to why they believe this might fall in their scope of practice or their standard of practice etc. They could make their case to the government, and the government at a future date could decide if members of another college could perform acupuncture.

We also put in a specific definition for "adjunct acupuncture." We did this because, during the course of the public hearings, I think enough people raised a concern that there's a difference between acupuncture practised by traditional Chinese medicine practitioners and acupuncture that is performed by other regulated health

professionals. We wanted to make a clear distinction between the two, that acupuncture practised by other regulated health professions, those we've outlined, the eight, is acupuncture for the purpose essentially of pain relief and it is done in conjunction with the scope of practice and the work that some of those other health care practitioners already do, be it chiropractors, physiotherapists etc.

We also kept in each of the sections the government language with respect to "with the standard of practice of the profession and within the scope of practice of the profession." We kept that in place, but added a section that talked about "regulations on the minimum standards to safely perform adjunct acupuncture as established by the Lieutenant Governor in Council." This was our way of trying to deal with the concern that was raised that there isn't a minimum standard in place right now with respect to other health care professionals who provide acupuncture. We saw that clearly during the course of the public hearings in questions that were raised with the college of chiropractors, for example, with the college of nurses etc.

There is a wide variation between the standards of practice to perform acupuncture that is required by various colleges. We put the onus back on the government to clearly outline what the government believes are the minimum standards that each of these colleges needs to meet in order to safely put themselves out as individuals who are qualified to perform acupuncture. That is what the reference to minimum standards means, and that is carried through with respect to naturopaths, which is point number 3, and with respect to those individuals who provide acupuncture right now as part of an addiction treatment program within a health facility. I will stop there, Mr. Chair.

Mr. Patten: This is a very interesting section, isn't it? The first thing I must say is that the College of Physicians and Surgeons—I think I mentioned this before—had to be removed from that particular list in that they have the authority under the Medicine Act, and in the statute they have the authority to set their own standards, regulations etc.

Second: "9. Any other college named in an order of the minister and published on the website of the Ministry of Health and Long-Term Care." There was always the option for the minister or others to come forward with the proposal to do this, so it wouldn't be required at this particular point. Then I'm advised that—because I personally like the term—"adjunct acupuncture" does not have a definition in practice and that it therefore may provide some limitations.

However, I think what you're trying to get at is the use of acupuncture within the scope of practice. Therefore, in the government motion we tried to address that, and we think we were able to get at it because we're headed in the same direction.

1750

The Chair: Ms. Martel and then Ms. Witmer.

Ms. Martel: The authority under the Medicine Act to set their own standard—does that mean that by legis-

lation they can set their own standard for their members who practise acupuncture? Is that what you mean when you say this is already referenced under the Medicine Act?

Mr. Patten: They already have the authority to deal with anything below the dermis in terms of surgery, or what have you, and invasive procedures for medical purposes. Besides that, we don't have the authority to infringe upon them at this particular stage, by regulation. So we just can't do it.

Ms. Martel: But don't members of other colleges also have the controlled act of a procedure below the dermis; nurses, for example?

Mr. Patten: No, not in an unqualified way, but within the scope of practice of their particular profession.

Ms. Martel: I don't understand that distinction. But that's probably not the most important part of this for me, so let me leave that for the moment and say two things.

The ministry says that we cannot have a definition of "adjunct acupuncture" because there is not a definition in practice. That's fine; why can't we define it? I mean, that is the point of legislation. I'm worried about that as an answer to why we can't make a clear distinction between what I think we should be making a clear distinction between, which is, as you have already said, Mr. Patten, clearly acupuncture that's practised in a different way, depending on if you are a TCM practitioner and if you are already a member of a regulated health profession who also provides acupuncture as part of a pain-management regime. So I still don't understand why we can't do that. We've made a reference to it in terms of a definition section at the bottom.

The other thing that I still remain concerned with, and I know we have been going around this issue a couple of times in earlier amendments, is what the government will do in terms of ensuring that the regulated health professions that the government has outlined in its amendment will still perform acupuncture within some minimum standard. You reference in your amendment "in accordance with the standard of practice and within the scope of practice," but that was already in the bill, and I don't think that caused anyone a lot of happiness in terms of it being very clear that there still had to be some kind of minimum standard that as a health care professional you had to meet to perform acupuncture.

So your language is still the same as what's currently in the bill, which is language that people had a concern with because it didn't clearly say that regardless of whether or not you were a doctor, a nurse, a chiropractor or a physiotherapist, there was going to be some minimum standard that you had to meet in order to also practise acupuncture.

Mr. Patten: I'm going to ask Steve to deal with your issue of the term "adjunct acupuncture."

Mr. Cheng: In taking a look at the government motions, let's refer to government motion 10.1. In that government motion, it does state that acupuncture is a procedure on tissue below the dermis and below the surface of a mucous membrane. In upcoming government

motion number 26, it says that for the purposes of these other colleges, acupuncture is "a procedure performed on the tissue below the dermis" only. So there is a distinction between the acupuncture that a TCM practitioner might practise and what the other colleges may also practise. In addition—

Ms. Martel: Hang on before you go any further, because I'm looking at number 10.1. The only difference that I see with respect to the authorized act is "performing a procedure ... below the surface of a mucous membrane for the purpose of performing acupuncture." So is that the only difference between acupuncture performed by traditional Chinese medicine practitioners and acupuncture performed by everyone else, that single notion?

Mr. Cheng: Encapsulated in that notion is that there are a limited number of acupuncture points that members of the other colleges may use, whereas motion 10.1 indicates that it is the full scope or the full range of acupuncture points, which may include on tissue below the surface of a mucous membrane. So there is a clear differentiation. We do understand that the practitioners listed under motion 26 do use acupuncture points, but they use a limited set of acupuncture points.

Ms. Martel: We get to that understanding by virtue of the fact that you use the word "acupuncture" under 10.1 under "Authorized acts"? Because you use the word "acupuncture," I'm to understand that all of those things flow from that?

Mr. Cheng: It's important to note that 10.1 says that "In the course of engaging in the practice of traditional Chinese medicine" TCM practitioners are authorized these controlled acts. When you're taking a look at number 26, the government motion is saying that a member of a college listed in column 1 may only perform acupuncture below the dermis. So there is a distinction there.

I would also like to note that the definition of "adjunct acupuncture," as currently defined in motion 25, does not encompass the use of acupuncture by those practitioners. HPRAC, in their 2001 report, has indicated that nausea and vomiting is an efficacious use of acupuncture that is being used, for example, after chemotherapy and that may be used by some of these practitioners.

In addition, acupuncture—

Ms. Martel: May I stop you there? There's lots from the HPRAC report that doesn't make its way into the bill. If we're going to go there, we're going to have lots of trouble, because there's lots that HPRAC said, and it seems like you're being rather selective about what you pick and choose in that regard.

Mr. Cheng: In addition, under subsection (4), as part of an addiction treatment program, that's also not used for pain.

The Chair: Thank you, Ms. Martel, if you have concluded.

Ms. Martel: Although I don't agree with it—I think it doesn't respond to the concern that both Mrs. Witmer and I have raised a couple of times now about what it is

and where it is that we and members of the public are going to be assured that there is some minimum standard. I'm looking very clearly at the government's motion which will come next, and I continue to see essentially "in accordance with the standard of practice and within the scope of practice of the health profession listed in column 2." I think we heard very clearly during the course of the public debate that that wasn't enough to guarantee that there was at least a minimum standard, some minimum level of training for people who were members of a regulated health care profession and were going to perform acupuncture. The use of the same language again is not going to get us that much further.

What is it about your amendment that's going to assure me, Mrs. Witmer and, frankly, members in the TCM community that the government understands that there has to be a minimum standard and the government has figured out a way to ensure that happens?

Mr. Cheng: Taking a look at government motion 26, subsection (4), it does say that a person who is mentioned under subsection (2) or (3) may only perform acupuncture "if he or she has met the standards and qualifications set by the college or the Board of Directors of Drugless Therapy, as the case may be."

It is assumed that the respective college and the respective board must set these standards and qualifications and that those performing acupuncture who are members of that college or the board must meet those standards and qualifications.

Ms. Martel: I'm still not sure what the difference is between that and essentially what was already outlined in the current bill where it also talked about acupuncture within the standard of practice and within the scope of practice of the profession.

Mr. Cheng: It's an additional requirement. I'm not sure we should be debating number 26 at this point.

The Vice-Chair (Mr. Khalil Ramal): Mrs. Witmer?

Mrs. Witmer: I would certainly again echo the concerns that have been raised by Ms. Martel. There appears to be no assurance provided to the public or no response to those who made presentations about the fact that there is a need for a minimum standard, there is a need to ensure that the public has confidence in those individuals who are going to be performing acupuncture. I'm afraid, when I look at the government motion, it certainly doesn't give me any assurance that that is indeed the case.

1800

The Vice-Chair: Is there any further comment? Section 25, NDP motion. Everybody in favour?

Ms. Martel: May I have a recorded vote, please?

The Vice-Chair: Okay. Section 18, motion 25, an NDP motion.

Ayes

Martel, Witmer.

Nays

Kular, Leal, Patten, Van Bommel.

The Vice-Chair: The motion is lost.

Now we have government motion 26.

Mr. Patten: I move that subsection 18(2) of the bill be struck out and the following substituted:

"(2) Section 8 of the regulation is amended by adding the following subsections:

"(2) Subject to subsection (4), a person who is a member of a college listed in column 1 of the table is exempt from subsection 27(1) of the act for the purpose of performing acupuncture, a procedure performed on tissue below the dermis, in accordance with the standard of practice and within the scope of practice of the health profession listed in column 2.

	Column 1	Column 2
1.	College of Chiropodists of Ontario	Chiropody
2.	College of Chiropractors of Ontario	Chiropractic
3.	College of Massage Therapists of Ontario	Massage Therapy
4.	College of Nurses of Ontario	Nursing
5.	College of Occupational Therapists of Ontario	Occupational Therapy
6.	College of Physiotherapists of Ontario	Physiotherapy
7.	Royal College of Dental Surgeons of Ontario	Dentistry

"(3) Subject to subsection (4), a person who is registered to practise under the Drugless Practitioners Act by the Board of Directors of Drugless Therapy is exempt from subsection 27(1) of the Regulated Health Professions Act, 1991, for the purpose of performing acupuncture, a procedure performed on tissue below the dermis, in accordance with the practice of the profession.

"(4) A person mentioned in subsection (2) or (3) is exempt from subsection 27(1) of the act for the purpose of performing acupuncture only if he or she has met the standards and qualifications set by the college or the Board of Directors of Drugless Therapy, as the case may be.

"(5) A person is exempt from subsection 27(1) of the act for the purpose of performing acupuncture, a procedure performed on tissue below the dermis, if the acupuncture is performed as part of an addiction treatment program and the person performs the acupuncture within a health facility.

"(6) In subsection (5) 'health facility' means a facility governed by or funded under an act set out in the schedule."

The explanation, first of all, on the list of college members who provide acupuncture in Ontario, who are listed here, these particular seven: All of these members must provide acupuncture in accordance with their profession's scope of practice and standards of practice,

and they must also meet standards and qualifications set by the college. In other words, if they do not have that, they cannot use the procedure. They're not allowed to. The college must have standards, whatever form that takes.

The Vice-Chair: Any further comment or debate?

Ms. Martel: I'm trying to be helpful. Where does it say that? Where does it say that the college has to have a minimum standard, because if you look—

Mr. Patten: It says it right there in subsection (4); it says, "for the purpose of performing acupuncture only if he or she has met the standards and qualifications set by the college...." In other words, if they don't have standards, that person cannot practise that.

The Vice-Chair: Any further debate?

Ms. Martel: Yes. Thank you for clarifying that for me. The next question I have is, what will be the control that the government has for the government to assure itself that those standards and qualifications are appropriate for someone who wants to perform acupuncture? Is there any mechanism to ensure that that happens? I mean, what if a college comes back to you and says, "We think that this is already within our scope of practice and our standard of practice, and we're not going to set out an additional set of qualifications for someone to perform acupuncture." What do we do then?

Ms. Henderson: This regulation is a government regulation, made by the minister under the RHPA. The vast majority of colleges—I don't have each of their professional misconduct regulations before me, but my recollection is that many of these professional misconduct regulations provide that the breach of a regulation is professional misconduct. This drafting of these provisions says a person who is a member of a college in the schedule and says in subsection 3, "a person who is registered to practise under the Drugless Practitioners Act." The ministry, these colleges and these drugless practitioners under the DPA, we have been informed relate directly to those practitioners who are currently providing acupuncture services to their clients and have been as they described during the submissions to this committee.

However, there is a condition on their providing acupuncture, and that is that these persons may only perform acupuncture if they have met these standards and qualifications set by the college or the board under the Drugless Practitioners Act. So there is a duty on the member or the drugless practitioner to meet the standards and there's a duty on the college and the board to set those standards—again, acupuncture only within the standard of practice and the scope of practice of each of those professions.

The Vice-Chair: Any further questions or comments?

Ms. Martel: I understand the reference to the breach of a regulation being a matter of professional misconduct. By that point, you have had an incident which has already occurred, so the college is in a reactive mode because they are now dealing with someone because a

complaint has arisen, maybe a complaint about the level of care or harm done or whatever. So while I recognize that it's a breach, I would rather be at the front end of the exercise in terms of what our expectation is so we don't end up with a breach.

Ms. Henderson: The breach is the event that a person performs acupuncture and is not compliant with this regulation. The regulation is also proactive in setting out the requirements in order for a person to perform acupuncture. Again, it's within the ethical and professional standards of each member of a college or a person governed by the Drugless Practitioners Act to comply with each of the requirements, and this is the new requirement.

Ms. Martel: So the new requirement is the standards and qualifications set by the college; that's the new requirement.

Ms. Henderson: When it's enforced, and it must be, again, within the standard of practice and the scope of practice of that profession.

Ms. Martel: But the scope of practice and the standard of practice was already in the bill. We had concerns about that. So adding those two, scope of practice and standard of practice, we already heard concerns about that language. So the new language includes now "standards and qualifications set by the college." I appreciate that. What do we do if we have concerns about what those standards and qualifications are? The other thing is, "set by the college." Does that mean the college has to enforce it? We also heard from some of the educational institution folks that they certainly have a number of hours, but it was up to the college to ensure or guarantee that people actually finish those hours. So is it implicit also in here that the college has an obligation to enforce?

Secondly, I just have to go back. Standards and qualifications still for me are pretty vague in terms of what is going to be required: What's going to be required by the College of Chiropractors, what's going to be required by the College of Physiotherapists etc.

Ms. Henderson: Again, the college has been given, by the Legislature, the authority to make regulations respecting standards, qualifications and standards of practice for each member of that college. The ministry may review those standards or those standards may be shared; or in the case of a regulation, there is a process set out by the RHPA, but the authority to make those standards and to set those policies or make regulations has been mandated to the colleges.

1810

Ms. Martel: If we look at the letter that the minister has sent, which I assume has a direct bearing on this section, what should we take from the minister's letter in terms of what he's going to be asking HPRAC in that regard? Are we to assume that the standards and qualifications set by the college would be the matter of the referral to HPRAC?

Mr. Patten: I said before, if you don't mind—and that's in the third paragraph, which is: "...options for the health professions to collaborate in the development of standards of practice for the same or similar controlled

acts, while respecting the competencies of the individual professions. I intend to seek further advice from HPRAC concerning these matters, and how best to facilitate that collaboration.” Implicit in that statement, to me, is that they will be brought together. I don’t know if HPRAC does it, but somebody’s going to bring them together and say, “Listen, we’ve got overlapping,” which is fine, because that’s part of the intent of the act in any case.

What would be the basis for variance? If we can’t all agree on one particular standard—and people are kind of leaning somewhat towards their greatest references—and work that through, and if we use this particular legislative model, this piece of legislation, we’re in the position of not being able to dictate to the colleges if we want to honour what the colleges come up with. They make it. They propose, there’s a reaction, there’s a review from the minister and it goes forward for the Lieutenant Governor in Council. So there is some give and take in this.

You may know this, and I’m sure the former minister would know this, but just because a college comes up with a set of recommendations in no way means that the ministry or the minister is going to say, “That’s fine with me.” I think we may see some of that emerge over the next little while as to what may happen.

Again, I can only surmise and give my interpretation of the letter. That’s the intent from the minister. He wants to move ahead, to bring these professions together to look at minimum standards and what’s the best way to facilitate that, and is seeking advice from HPRAC.

Ms. Martel: Then we go back to Mrs. Witmer’s original question: Can we get clarification that there will be a new referral? I think we’d like to have that answered in this committee.

I just repeat the concern I’ve had: For me, the issue has always been, what is the mechanism by which we can ensure this happens—a minimum standard? We’ve heard talk about practices and procedures which don’t have to be dealt with by the ministry, or a regulation which does have to be dealt with by the ministry. It’s not clear to me that whatever the college comes up with with respect to a minimum standard will come via the way of a regulation the minister has to authorize. I don’t know how else to explain it except in that way.

Mr. Patten: I don’t know the answer to that because I’m not a lawyer. My reading of this is that they have to develop standards. They can do it through regulation, they can do it through bylaws or they can do it through guidelines, whatever it is, and those are binding. Members of that particular college, if they do not adhere to it, are susceptible through breach of whatever the terminology is, regardless of what modality they use. I know in regulation they must come through the ministry. If they do it by virtue of guidelines, even though they don’t, is there a legal engagement there if they choose, let’s say, to develop guidelines?

Mr. Cheng: If colleges develop guidelines, they frequently—and this is the current practice—send out those guidelines to their members, as well as to other colleges for comments. They do conduct that type of con-

sultation. I believe that’s what we heard when the college of chiropractors was in here, as well as the college of physiotherapists. They both mentioned that they would be sending out their standards-of-practice guidelines within a month or so.

Ms. Martel: I know that, and I know they do that with their own members, but that’s not my question. My question is, where does the ministry become implicated in this process? I recognize the procedure they use to develop their—and it goes to council and there’s a vote and the whole nine yards, but that doesn’t mean that the government has any opportunity or mechanism there to say, “Yes, we agree that for this profession, 200 hours is appropriate” or “For this profession, we don’t think 200 hours is appropriate because we think, with your level of training, you need 300.”

Mr. Patten: I guess the clarification is, is there a qualitative difference in terms of enforcement between standards that are in regulation versus standards that are in guidelines or something else? And if it’s not regulation, does the ministry still have some leverage in terms of saying, “We think that’s pretty weak,” or whatever?

Ms. Martel: Or not enough.

Mr. Patten: Yes.

Ms. Henderson: Just one last one: With the greatest respect, the existing law, which has been in place for many years now, has permitted anyone to provide acupuncture to the public through the regulation. Those members of regulated health professions and who practise acupuncture, along with those members currently registered with the board under the Drugless Practitioners Act, have been subject to the fairly significant complaints and discipline procedures under the RHPA and the DPA. The public in that regard has been protected, as the public is protected for any number of the innumerable procedures performed every day by health practitioners. These are new requirements that all regulated health professionals who come within this new regulation will have to meet. But I must say again that the exemption has been in place for many years and indicates that apparently—“apparently,” because I’ve not been privy to all of their issues but they did make reference to some of them in their presentations to the committee—this procedure has been dealt with in an ethical and safe way and those standards are going to be heightened by virtue of the government’s motion.

The Vice-Chair: Ms. Martel, are you satisfied with the answer? Any more questions, comments? If not, I’m going to move to Mrs. Witmer.

Mrs. Witmer: Probably this is the best we’re going to get. I guess what this does, which we didn’t have before, is at least give the assurance that there will be standards established. If we take a look at the research that was done with us in terms of standards of practice regarding acupuncture, it was clear that many of the colleges currently did not have any standards of practice. So I guess this does mean—and you can let me know, one way or the other—that they must develop standards and qualifications. Although it doesn’t give any indication as to what the minimum standards may or may not be, at

least now anybody who is performing acupuncture, we now see that's limited certainly to colleges. We also now know that there will be standards they will have to meet.

Obviously, I'd like to see a stronger commitment to a minimum, but at least here we do have a commitment to the establishment of standards if you're going to be performing acupuncture. So it's a compromise.

The Vice-Chair: Any further questions or comments? Now we're ready to vote on motion 26. All in favour? Opposed? Carried.

Shall section 18, as amended, carry? All in favour? Anybody opposed? Carried.

Now we move to government motion 27.

Mr. Patten: I move that subsection 19(2) of the bill be struck out and the following substituted:

"Same

"(2) Sections 3 to 11, 13, 17 and 18 come into force on a day to be named by proclamation of the Lieutenant Governor."

The Vice-Chair: Any debate? All in favour? Any opposed? Carried.

Shall section 19, as amended, carry? All in favour? Any opposed? Carried.

We move to section 20, government motion 28.

Mr. Patten: I move that the French version of section 20 of the bill be amended by striking out « praticiennes et », which clarifies the French title.

The Vice-Chair: Any further debate or questions? I'll put the motion for a vote. All in favour? Anybody opposed? Motion carried.

Shall section 20, as amended, carry? Anybody opposed? Section 20 is carried.

Shall the title of the bill carry? All in favour? Anybody opposed? Carried.

Shall Bill 50, as amended, carry? All in favour? Anybody opposed? Carried.

Shall I report the bill, as amended, to the House? All in favour? Anybody opposed? Carried.

Now we are adjourned.

The committee adjourned at 1822.

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Also taking part / Autres participants et participantes

Ms. Christine Henderson, counsel, legal services branch;

Mr. Stephen Cheng, senior policy analyst, regulatory programs unit,
health professions regulatory policy and programs branch;

Mr. Tim Blakley, acting manager, regulatory programs unit,
health professions regulatory policy and programs branch,
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Official Report of Debates (Hansard)

Monday 27 November 2006

Journal des débats (Hansard)

Lundi 27 novembre 2006

Standing committee on social policy

Ministry of Government Services
Consumer Protection and Service
Modernization Act, 2006

Comité permanent de la politique sociale

Loi de 2006 du ministère
des Services gouvernementaux
sur la modernisation des services
et de la protection
du consommateur

Chair: Shafiq Qaadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 27 November 2006

Lundi 27 novembre 2006

*The committee met at 1550 in committee room 1.*MINISTRY OF GOVERNMENT SERVICES
CONSUMER PROTECTION AND SERVICE
MODERNIZATION ACT, 2006LOI DE 2006 DU MINISTÈRE
DES SERVICES GOUVERNEMENTAUX
SUR LA MODERNISATION DES SERVICES
ET DE LA PROTECTION
DU CONSOMMATEUR

Consideration of Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services / Projet de loi 152, Loi visant à moderniser diverses lois qui relèvent du ministère des Services gouvernementaux ou qui le touchent.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, I call this meeting to order of the standing committee on social policy. As you know, we're here to consider Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services.

SUBCOMMITTEE REPORT

The Chair: Before we begin hearing from our external presenters, I now invite a member of the government side to enter into the record the report of your subcommittee on committee business, for which purpose we have Dr. Kular.

Mr. Kuldip Kular (Bramalea-Gore-Malton-Springdale): Your subcommittee met on Tuesday, November 21, 2006, to consider the method of proceeding on Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services, and recommends the following:

1. That the committee meet in Toronto on November 27, 28 and, if necessary, December 4, 2006, for the purpose of holding public hearings.

2. That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the English Toronto dailies, and a French Toronto weekly.

3. That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel, the Legislative

Assembly website and in the Ontario edition of the Canadian Newswire.

4. That members of the subcommittee forward contact information for groups and individuals who wish to be considered to make an oral presentation to the committee clerk's office by 10 a.m. on Thursday, November 23, 2006.

5. That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Thursday, November 30, 2006.

6. That groups and individuals be scheduled on a first come, first served basis from the lists provided by members of the subcommittee and then from the committees branch database.

7. That groups and individuals be offered 15 minutes for their presentation. This time is to include questions from the committee.

8. That the deadline for written submissions be 5 p.m. on Monday, December 4, 2006.

9. That for administrative purposes, proposed amendments be filed with the committee clerk by 10 a.m. on Tuesday, December 5, 2006.

10. That the committee meet for the purpose of clause-by-clause consideration on Tuesday, December 5, 2006.

11. That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

Thank you, Mr. Chair.

The Chair: Thank you, Dr. Kular. Before proceeding to consideration, I would just invite all of those gathered here to please turn off their cellphones. However entertaining the jingle may be, it does of course interrupt proceedings.

If there are any further questions, comments or debate—Mr. Kormos.

Mr. Peter Kormos (Niagara Centre): I trust you'll be equally strict with committee members and their BlackBerries.

The Chair: Due process, Mr. Kormos. Thank you.

Are there any further questions, comments or debate on this subcommittee report?

Mr. Kormos: Yes. If we could get updated by the clerk as to what the demand has been, what the response has been.

The Clerk of the Committee (Mr. Trevor Day): We currently have a number of requests. We have enough

requests to fill next Monday at this point, so any further requests we'd be taking in would start to put us over. We'd have more than we could—

Mr. Kormos: Thank you.

The Chair: Any further comments? May I take it, then, it's the will of the committee that the report be adopted, as read, into the record?

Interjection.

The Chair: So moved. Yes, Mr. Tascona.

Mr. Joseph N. Tascona (Barrie-Simcoe-Bradford): I agree; it's adopted. I agree.

The Chair: Thank you, Mr. Tascona.

SUSAN LAWRENCE

The Chair: We'll now proceed to our first presenter, and that is Ms. Susan Lawrence, who is coming here in her capacity, as I understand it, as a private individual. Ms. Lawrence, to you and to others gathered here, the protocol for the entire afternoon will be 15 minutes in which to make your deputation. Any time remaining will be distributed evenly amongst the parties for questions and comments. I would invite you to be seated, and your time begins now.

Ms. Susan Lawrence: Good afternoon. My name is Susan Lawrence, and I thank you for allowing me to speak before you on Bill 152, in particular the Land Registration Reform Act and how it affects mortgage fraud crimes in this province.

Please bear in mind that I'm not a lawyer, I'm not a legislator, just a business person who one day stumbled across the fact that the house I owned, I really didn't, and it was mortgaged, without my knowledge, to the tune of \$300,000. I've spent the past year learning about mortgage fraud, and I do believe that I now have a very good understanding of what happened, how it happened, but, more importantly, why it happened.

Today I would like to address how Bill 152, while it does address the growing problem of mortgage fraud in this province, in my opinion, just doesn't go far enough to stop this from happening.

In case you're not familiar with my story, it all started in November 2005, when basically all I did was put a "for sale" sign on my lawn. This was a symbol for criminals to forge a sale document, fraudulently register a change of ownership against my title and mortgage the property for almost \$300,000. Almost three months later, I stumbled across the fact that the home I thought I owned, I didn't, and it had been taken from me without my consent or knowledge.

The provincial government is now taking positive steps with Bill 152 to help victims like myself, but I believe that the portion of Bill 152 dealing with mortgage fraud does not go far enough to stop this vicious crime from happening. I believe that when you do something, you do it right, and when you know better, you do better. I also believe that fraud targets the weakest links, and controls within this system are definitely the weakest

links. There are several controls that, if in place, would have prevented this crime from happening to me.

First of all, access must be restricted to the electronic registration system so as to reduce the incidence of fraud. Once fraudsters have access to the Teranet system, they can perform any number of phony title transfers and fraudulent mortgage deals. I am told that it takes just \$600 and a one-day course at a community college to gain access to the land titles registry, and access codes and/or cards can be either stolen or passed over to almost anyone. There are no definitive controls to stop fraudulent access, nor are there any audit trails which identify queries to any properties within the system.

To protect against mortgage fraud, due diligence must be practised at all levels and at every single stage of the process, and particularly within our lending institutions. Banks and trust companies must insist on a face-to-face, on-site appraisals. Proper checks must be performed on both the buyer and the seller. A simple phone call is not sufficient to check on employment.

In my particular case, the fraudster said he worked at a car wash and he was paid in excess of \$78,000 annually. This is absurd and should have raised concern somewhere along the line. It turns out that the address of the car wash was a video store. Each and every page of the documentation put forth to the lending institution contained a different signature both for the buyer and the fake Susan Lawrence. The name of the buyer was even spelled differently on several pages. There's just too much pressure to close the deal. Depersonalization of the process of borrowing money and increased competition within the mortgage industry make it easy for fraudsters to commit this crime.

I believe there's a clause in the Land Titles Act which allows for a 21-day wait period before a title is actually transferred. If this were enforced, a check, either by mail or by some sort of identification, i.e., a PIN number, would be one more step in stopping this vicious crime.

During the past year, I've spent close to \$30,000 fighting against the criminals who so easily stole my home. If someone had knocked on my door to appraise the house, if someone had said, "Hey, \$78,000 is a lot of money to be paid to wash cars," if someone had noticed that every single signature on every single page was different, if someone had checked the driver's licence number accredited to me or even my social insurance number, or even closely examined the documentation they'd put forth and realized it was fake, this never would have happened to me, and it shouldn't happen to anybody else.

There's a fund set up to help victims of mortgage fraud like myself. It is set up by the government from taxpayers' hard-earned money. It's called the land titles assurance fund. Applicants presently have to exhaust all other avenues before applying for compensation from this fund. It involves lengthy and costly legal procedure. Even after everything I've gone through and everything I've learned this past year, I would not feel comfortable applying to this fund without legal counsel.

If procedures were put in place to restrict and stop criminals from getting away with this crime, it would not

be necessary to have these tax dollars pay for crimes committed by these disgusting individuals. I personally would rather have my tax dollars paying for medical help for victims of cancer, not fraud. But I am delighted that the government is finally addressing this atrocious crime and I implore you to do it right.

Thank you. Any questions?

1600

The Chair: Thank you, Ms. Lawrence. We have about three minutes per side, beginning with the official opposition.

Mr. Tascona: Thank you very much for coming here today, Susan. I appreciate that.

Bill 152 is not retroactive, as you're aware. It only takes effect as of October 19, 2006, for certain measures. Have you got any comments on that, because you won't benefit from it at all?

Ms. Lawrence: I won't benefit from it at all. I'm going to appeals court tomorrow to appeal the decision that was made in my first case, where they asked them to dismiss the mortgage. I'm planning on winning, I guess.

Personally, I really don't think the government is aware of how epidemic this mortgage fraud is. Everybody I speak to has a story—every single person. The other day I met a lady who said it happened to her. How they stopped it was that Hydro came to change the billing, and that's how she found out about it. None of these people is applying to the fund. They're stopping it. The crime is so ridiculously easy to commit, it's ludicrous. The police told me that it's more lucrative and less dangerous than dealing drugs.

Mr. Tascona: Just to follow up on that, as you know, I put forth a Bill 136 that would make this type of activity retroactive and provide for reasonable compensation for legal fees and that. I know that you've got a strong interest in this but, objectively speaking, do you feel it's fair, based on this being a government-run system that people have been impacted by, that this type of activity should be looked after retroactively?

Ms. Lawrence: Yes, I think it's fair. I'm victimized; I've been doubly victimized, actually. I've been victimized by the system and I've been victimized by the crooks. Any help that somebody in my position could get I'm sure would be truly grateful for it.

Mr. Tascona: Tomorrow, you're going to be going to the court of appeal. Is that to get your home back?

Ms. Lawrence: Yes, to get the mortgage dismissed on my home.

Mr. Tascona: Were you successful at the lower level?

Ms. Lawrence: I was successful in getting title to my house back. The judge was very sympathetic towards my case. He informed me that he could not overrule a decision that had been made in the appeals court, so now I'm in appeals court.

Mr. Tascona: The legislation, Bill 152, as I understand it, will not impact that court decision. If you lose tomorrow, you will still have the mortgage on your property because the government hasn't made this bill retroactive?

Ms. Lawrence: Correct.

Mr. Tascona: Those are all my questions.

The Chair: Thank you, Mr. Tascona. Mr. Kormos?

Mr. Kormos: Thank you, Ms. Lawrence. Help us to understand. You obviously had an opportunity to see the documentation or to see photocopies of it, with different signatures, different handwriting at different points in the document. Was this an electronic registration?

Ms. Lawrence: No. This was done by hand: the sale of the property and then the mortgage applications.

Mr. Kormos: And lawyers were involved in the transaction?

Ms. Lawrence: Yes. I'm not quite sure that the lawyers were above the law, but I—

Mr. Kormos: What do they have to say for themselves?

Ms. Lawrence: They provided documentation. Two pieces of ID have to be given when you present yourself to a lawyer. In my case, they gave a social insurance number and a driver's licence. The driver's licence was with my name and my address. It wasn't my driver's licence number; it wasn't my picture. The actual picture on the ID had been pasted on. You could see that it was crooked. None of the numbers and names and things lined up on either piece of documentation.

Mr. Kormos: Have the lawyers accepted any responsibility for what they did or didn't do?

Ms. Lawrence: One lawyer in my case was under suspension by the law society, and I do believe that you're not allowed to act on behalf of or as a lawyer during suspension. They're being investigated now. The other lawyer has referred the case to his insurance company.

Mr. Kormos: When I was a very young articling student—as a matter of fact, the articling students are the ones who go to the land registry offices and close the deals. Now, this is small-town Ontario and maybe there is a difference there, but the clerks would go through the document—this is still the old registry office—and they would examine signatures. They would look at the documents that way.

In the course of your litigation, did you ever find out what did or didn't happen at a land registry office in terms of—

Ms. Lawrence: It was all done electronically. Nobody showed up. Nobody saw a face. Nobody saw a signature.

Mr. Kormos: Ah, okay. You see, I've got this suspicion about the electronic registration. At first I thought maybe you had to scan the document and send the image down to the registry office. No. It's like when the accountant does your income tax for you and he doesn't send any of the documentation. It's just his or her say-so on the income tax form. That seems to me, ladies and gentlemen, to be a real, glaring, huge, Mack-truck-sized hole in the system.

Ms. Lawrence: That's why I recommend that there be some kind of restriction on who can get on to that system. In the Teranet system, apparently you have a number or a card, and if you lose it or give it to somebody else, anybody can use it. Plus, they don't track who goes on. They don't track to see who goes on to that system to

check on your house. For the crook to steal my house, he had to go on there and say, "Okay, she has lived there for so many years, she doesn't owe money on it," and so on. Nobody can backtrack and tell me who did that.

The Chair: Thank you, Mr. Kormos. With respect, we'll offer it to the government side too.

Mr. Vic Dhillon (Brampton West—Mississauga): Thank you very much for coming before the committee this afternoon. I just wanted to make a couple of comments. You were mentioning that you hear about these transactions all the time. Our research has indicated that there are millions of transactions taking place every year, and we found that the incidence of this type of fraud is very low, although it's totally unacceptable. Even one case is unacceptable. But we've found that in millions, I believe, fewer than 50 cases have been brought up, and other provisions in this bill are meant to restrict and control who is making the registration. So your points are well taken. Thank you very much.

Ms. Lawrence: Can I ask you one question? When you report on how many cases of fraud go through, where do you get that information from? Is it from the insurance fund?

Mr. Dhillon: We can—

Ms. Lawrence: Because I've never been given—I've asked several times. I've asked the banks. I've asked the insurance companies.

Mr. Dhillon: Can I have somebody from the ministry, maybe, to answer that?

Ms. Kate Murray: The numbers that we have in terms of application with respect to the incidence of fraud are related to the applications to the insurance fund.

Ms. Lawrence: Okay. Not all fraud victims go through the fund. I'm not going through the fund.

Mr. Dhillon: Thank you very much.

The Chair: Thank you, Ms. Lawrence, for your deputation and presence today.

WINE COUNCIL OF ONTARIO

The Chair: I would now invite our next presenter, the Wine Council of Ontario; Ms. Linda Franklin, president. Ms. Franklin, as you've seen, you have 15 minutes in which to make your presentation. Please begin now.

Ms. Linda Franklin: Thank you. As folks know, this is a bill with a lot of diverse components, so my presentation will be entirely on another subject: the components of the bill relating to the Liquor Licence Act reforms.

The Wine Council of Ontario, as many of you will know, is the wine industry's trade association. It represents over 65 wineries in Ontario. We're very pleased to be here today to support the Ministry of Government Services Consumer Protection and Service Modernization Act as it relates to changes in the Liquor Licence Act.

Fifteen years ago, when I first came into this job, we had 20 wineries in Niagara and southwestern Ontario, most of them mid-sized producers and most of them only

selling wine to the liquor board. Today, of course, with over 100 wineries in the province, the vast majority of our members are small estate producers and all of them are very dependent on tourism and on-site sales. In fact, in many cases, 100% of the wine that's sold is to tourists visiting their properties.

Over the same period of time, winery tourism has now become a significant economic driver in southwestern Ontario and Prince Edward county, as well as Niagara. The Niagara-on-the-Lake Chamber of Commerce has recently presented a study showing that winery tourism is the number one reason for visiting this area for the over three million tourists who come to the community every year.

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So this, folks, is a huge departure from just a decade ago, when the wine industry was putting up booths at Casablanca Boulevard in Niagara with question marks on them, hoping to draw people off the highway. In fact, what we were hoping was that they would come to use the bathroom facility that we put on site and, if they did that, maybe then we could hand them a wine brochure suggesting a tour of wineries. We've gone from that about 15 years ago to a situation now where we get 750,000 to a million tourists down Niagara way. As Mr. Kormos will know, it is a huge part of the industry now. It's good for the regions where wineries are located, it's good for the provincial economy, and it drives a lot of other economic activity.

This is all good. Unfortunately, liquor laws haven't addressed this changing landscape. The liquor laws predate winery tourism; they predate winery visitation. They leave wineries drowning in a sea of paperwork and unable to accommodate really simple, basic requests from their visitors.

The legislation reforms for the Liquor Licence Act before you today, along with the pending regulatory and policy changes, we think will begin the process of modernizing this act and aligning the rules for wineries with the realities of the tourism industry that has grown up around our wine industry in the past two decades.

Wineries offer visitors a range of educational experiences on site. All require that visitors walk through the winery property so that they can look at various activities in the wine cellars, in the vineyards, and see what happens in the process of winemaking. Right now, a winery can't pour a taste of wine for a visitor and have them walk with that glass through that experience. You can't carry a wineglass from the tasting bar to the vineyard, for example. So you can't have a discussion of the grape-to-wine process with the glass in your hand. The proposed changes today will allow for this interaction with visitors, winemaking sites and vineyards and will recognize consumers' increasing interest in an interactive winery experience.

Similarly, wineries that want to offer wine for sale by the glass on their properties currently can't do that. The only way to allow this to happen right now is for the winery to take out what's called a tied house licence.

That requires wineries to become virtually full-service restaurants. They have to offer several meal selections, they have to have the on-site ability to prepare these meals, they have to have full-service kitchens, and these provisions, as you can imagine, are fairly onerous for wineries whose only goal in life is to sell somebody a simple glass of wine and let them sit at a picnic table and look at the vineyards. Frankly, all those wineries would like to do is offer some bread and cheese to go with the wine.

Right now, as well, particularly in Niagara region, this provision is causing huge consternation for the escarpment commission and has for quite a while, because when they see applications come through from wineries for a tied house licence, their concern is that all these wineries are going to open full-scale restaurants: "That will be bad for the escarpment. What will we do with all the various and sundry issues that arise from that?" In actual fact, most of these wineries would have no intention of doing anything like that.

Again, I think the proposed changes to allow wineries to sell a glass of wine to consumers will recognize that this kind of activity can take place in a socially responsible way, in an educational environment, in a way that lets visitors enjoy the ambience of the winery without the requirements of full meals, so our wineries won't have to open a restaurant in order to serve a glass of wine.

Another important issue in tourism that these changes will address is to give tour operators the ability to offer tourism packages that include beverage alcohol in the price of the package. You can imagine that's helpful in wine country for many of the folks who offer tourism experiences. That way, visitors can know exactly what the cost of their total package is. Right now, hospitality providers in wine regions can't include wine in a tourism package that includes accommodation and food. Similarly, hotels can't include a bottle of wine in the cost of the price of a room and they can't charge for that wine in the room rate. So again, it makes it almost impossible to provide a complete package to guests to ensure that the guests know exactly what the cost of that package is going to be and to allow for an interactive experience that includes wine as part of the tourism experience.

This is particularly important to us because current research makes it really clear that tourism visitors want packaging that takes care of all their needs. Folks are busy, their time is at a premium, and they're not all that interested in figuring out all the bits and pieces of their travel agenda. So to the extent that we can accommodate all the elements of that agenda, we're better off. Certainly that's how it's done in the rest of the world. So it takes away an irritant, I think, that's a problem for the tourism sector in the province, not just in wine regions.

Finally, among the issues meant to address social responsibility, the new rules will let wineries charge a nominal fee for wine sampling. Right now, the regulations actually prohibit wineries from charging for a sample of wine. We think that's silly, frankly. We think it's a good idea to be socially responsible and allow for a

small fee that we think will help discourage folks from simply sampling too much and drinking too much, and it places a value on the alcohol being served at the tasting bar. So wineries welcome this change, and we think it's in the public interest.

Overall, we believe the changes being proposed to the Liquor Licence Act piece of this legislation will really help us move liquor policy and regulation into the 21st century and into closer alignment with the needs and realities of a vibrant winery tourism industry, which we certainly have in the province today. So we welcome these changes.

The Chair: Thank you, Ms. Franklin. We have about two minutes per side, beginning with Mr. Kormos.

Mr. Kormos: Thank you kindly. No quarrel from me on any of these. You're right: I come from wine country down in Niagara, and it's literally the only real growth there is down there, in terms of industrial job losses. It's the small boutique wineries that are still continuing to grow and that are a huge draw. But most of what you're speaking of is being done by regulatory change.

Ms. Franklin: Correct.

Mr. Kormos: The problem is that here we've got a bill that addresses one very serious issue, the land titles issue, title fraud, while the regulatory changes with respect to wineries could have been done without this bill; they don't need the bill. That's one of the difficulties we have, because we want to be fair to all the people that are impacted by the bill. I don't think anybody is going to quarrel with you here, but we've got some real concerns about the effectiveness of the bill in terms of protecting people like Ms. Lawrence—you heard her—from fraud artists. So if it appears that maybe we're a little pre-occupied with the bill, it ain't because we've got concerns about wineries accommodating their visiting guests.

Ms. Franklin: We certainly wouldn't feel hurt by that.

The Chair: To the government side.

Mr. Dhillon: I have no questions. Thank you very much for appearing before the committee, Ms. Franklin.

Ms. Franklin: You're welcome.

The Chair: Any further questions from the government side? Seeing none, Mr. Tascona.

Mr. Tascona: I'm sure you know Tim Hudak, our member from Niagara, and I'm sure he's in favour of this.

Specifically, because Mr. Kormos asked you about whether this was a regulatory change—you said it was—was there anything in this particular bill, Bill 152, that impacts your industry?

Ms. Franklin: Yes. Most of what's going to happen is going happen, as Mr. Kormos pointed out, through regulatory and policy change. A good deal of—

Mr. Tascona: But is there anything in the bill—it says that minor housekeeping amendments have been made to update the references to the Wine Content Act, and to the Wine Content and Labelling Act, 2000.

Ms. Franklin: Right.

Mr. Tascona: Is there anything in the bill that touches on your industry?

Ms. Franklin: Other than those housekeeping changes? No, not in the legislation itself.

Mr. Tascona: In terms of those housekeeping changes, what specifically are those?

Ms. Franklin: Honestly, I couldn't tell you. They're minor.

Mr. Tascona: They're very minor. Not to be facetious here, but the thing is, we've got about 54 acts being amended here and this is minor housekeeping. How are you aware of exactly what they're going to do, which you support in this submission? Have they told you that by letter?

Ms. Franklin: Yes, they've advised us through the consultation process, and there were ministry briefing notes that came along with the legislation when it was made public that indicated what would be happening in terms of the regulatory side of our industry.

Mr. Tascona: So they gave you ministry briefing notes on that?

Ms. Franklin: No, they're publicly available. They're up on the website.

Mr. Tascona: Did they give your industry a letter on this saying that they were going to do this?

Ms. Franklin: No, but there are briefing documents, press releases and things on the ministry website. They're publicly available. They weren't just delivered to our industry.

Mr. Tascona: Okay. So that's how you became aware of how it was going to impact you.

Ms. Franklin: Right.

Mr. Tascona: Okay. That's good. Thanks very much.

Ms. Franklin: You're welcome.

The Chair: Thank you, Ms. Franklin, for your presence and deputation on behalf of the Wine Council of Ontario.

ROBERT FREEDLAND

The Chair: I invite now our next presenter, Mr. Robert Freedland. Mr. Freedland, as you've seen, you have 15 minutes. I invite you to be seated. Your time begins now.

Mr. Robert Freedland: Thank you. My name's Robert Freedland. I'm a former commercial real estate agent. I now work in social services.

Just as a general comment, I wanted to say that it's great to have committees and it's great to draft legislation, but if there's no teeth, if you're creating paper tigers, there's no point; it's irrelevant.

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Specifically, I was cheated by a real estate agent about a year ago. He was an unscrupulous, unethical, despicable real estate agent, a member of the Toronto Real Estate Board. I filed a complaint with the Real Estate Council of Ontario and, to make a long story short, they did absolutely nothing. They gave him a caution.

Anyone who's familiar with the Real Estate and Business Brokers Act knows that it covers just about everything. It covers fiduciary duties, dual agency, what the obligations of an agent are to their client or customer; it spells out everything. It's unequivocal, it's in black and white, there's no grey area, and yet there's no one to enforce it. The people left to enforce it are the industry itself. It's like going to a prison and asking the inmates to set the rules and govern themselves.

I worked in real estate and I can tell you first-hand that many of the people who work there not only should not be working in real estate, they should be in prison, they were so unscrupulous, dishonest and unethical. I can tell you first-hand that the stereotype of the used-car-salesman kind of real estate agent is very true. Their salary is earned by commission, and do you know what? When your bills are due at the end of the month, if you have a family to support, you get desperate. There are a lot of agents who, regardless of their desperation, act unethically, do things that are outrageous.

In my case, I purchased a condo and found out after the deal had closed that there was not one, there were six identical units to mine for sale in the same building for 40% less than what I had paid. My agent had lied to me. He was acting under dual agency. Not only did he not disclose that these other, cheaper units existed, he lied to me and told me that there was just one one-bedroom unit for sale. He didn't tell me that there were six, and he tried to buy them behind my back. These properties were also listed on the multiple listing service.

When I filed the complaint with the Real Estate Council of Ontario, the deck was stacked against me: Number one, upon filing my complaint, part of the condition was that none of the evidence provided by the real estate agent could be used against him at the following civil lawsuit, which I filed. As well, I wasn't allowed to see his defence. So he was able to see my complaint, but I wasn't able to see his defence. I have no idea what lies or what he said to the Real Estate Council of Ontario that they did nothing to discipline this agent or punish the brokerage.

Again, getting back to the Real Estate and Business Brokers Act, when I was a student studying to be a real estate agent, it was like going through law school. We went over, section by section, fiduciary duty, all these clauses. We felt completely empowered; we felt like we were joining a professional industry. I got out there and it was nothing like what we had learned in class. The real world was really different. They're just dishonest, backstabbing, lying, and they get away with it. There's no one to police the real estate industry.

The largest consumer purchase that an individual is going to make, on average, is real estate. We hear about travel, people's holidays going wrong, tour operators and this and that, airlines going bankrupt, but people are out of pocket a couple of thousand dollars. With real estate, people can be out literally millions of dollars. I feel for a lot of the immigrants who come here. Passive immigrants come here and they have to deal with unscrupulous law-

yers. That's another issue altogether. The law society is also a group of hucksters. It's a self-governing body, and they're such hypocrites that about 10 years ago they insisted that the police were not capable of policing themselves—

The Chair: Mr. Freedland, I appreciate the passion and energy which you bring to this particular deputation. I would remind you that this is a committee of the Parliament of Ontario, and were we to say some of these words in the House, we would be asked to withdraw. With that, I would respectfully ask you to continue, abiding by that.

Mr. Freedland: Okay. Just to continue with the SIU, it was lawyers who insisted that the police were not trustworthy—is that fair to say?—and that they were not capable of policing themselves, and the SIU, the special investigations unit, was formed to investigate. Police would no longer investigate themselves when members of the public were injured and police were involved.

To have lawyers investigating lawyers is also outrageous. One of the lawyers at the subsequent trial I had failed to show up at trial. He lied to me and said he never received the trial notice. I subsequently found out that he had. Not only did he know about the trial date, but he had corresponded with the defence counsel. I filed a complaint with the law society. It has taken almost a year, and this lawyer is ignoring the law society. As of this morning, I followed up and asked the investigator at the law society, "What's your next move? What happens now?" It's almost comical. Their response was that he has until November 29, which is two more days, and they're going to consider some sort of disciplinary action. In the meantime, almost a year has passed and nothing was done to this unscrupulous lawyer.

Getting back to my original comment: Legislation is great on paper, but someone has to be enforcing it. At the end of the day, there has to be some penalty; there has to be some deterrent.

I guess it was about six or seven years ago that the Conservative government introduced mandatory insurance—it was in the first year I was a real estate agent. This was meant to protect consumers; that was the purpose of it. It has actually had the reverse effect. What it has done is that real estate agents can be much more cavalier in their behaviour, and they're covered by insurance. Using my situation as an example, my unscrupulous real estate agent was covered by an insurer. The insurer provided him with a Bay street law firm; he was very well protected. It didn't serve me, because I had to go and hire my own lawyer and go up against this Bay Street law firm. How is the government protecting individuals and consumers? The answer is, they're not. So that backfired; I don't know why that's not under review.

On the issue of dual agency, with respect to real estate agents representing both the buyer and seller, it should never be legal. In some jurisdictions, it's not at all. It's a complete conflict of interest. The Real Estate Council of Ontario acknowledges, in the brochures that they require real estate agents to hand to consumers, that it's a conflict

of interest. Well, if they acknowledge it, then why is it allowed? It's similar to going to trial and your defence counsel is also the prosecutor. It just can't be. Yet somehow this industry has persuaded the government of Ontario to allow dual agency. It should never, ever be legal.

If I had the time, I could tell you dozens and dozens of first-hand stories of my experiences as an agent where agents acted in a dual-agency capacity and their loyalty was to one party. When I was a commercial agent, my loyalties were to the landlord. If I'm leasing an office building, I have a relationship with the landlord. Me and him go back years. He's paying me and somebody walks in off the street and wants to rent a small office. Who's kidding whom? My loyalties aren't to some guy walking in off the street. For me to sign a dual-agency agreement and mislead a consumer into believing that somehow I'm going to act fairly borders on fraudulent. It's completely misleading. People who are well-informed, well-read, educated investors can, for the most part, defend themselves. But you're dealing with a multi-cultural society. People are not familiar with our laws. They look impressive on paper; they look impressive on television. But when incidents like mine and like these title insurance fraud people occur, we find out the realities and weaknesses of our system.

Again, legislation is great, but where are the teeth? Any of you who have seen the travel section of this week's newspaper can see lots of tour operators offering flights to Florida for \$29. Wasn't there supposed to be some legislation insisting that tour operators and travel agencies include the taxes? That's not happening. Who's enforcing this? Who's policing all these nice rules and laws that are on paper?

That, in a nutshell, is my comment. Anyone who has any specific questions or who would like to speak to me further about the real estate industry, I have plenty to say. I hope the real estate council will end as a self-governing body. They have no business policing themselves.

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The Chair: Thank you, Mr. Freedland. We have about one minute per side, beginning with the government. Mr. Ramal.

Mr. Khalil Ramal (London-Fanshawe): Thank you very much for your presentation. I'm just confused about—I don't know. What you said may be correct or may not be correct; I'm not sure about this stuff. I don't know what the relation is between what you said and this bill. So anyway, you're telling us we shouldn't trust the real estate and the lawyers who are acting on the behalf of the landlord and the tenant at the same time, and that this should be illegal? This is your position?

Mr. Freedland: Well, no. The way the laws exist now in the Real Estate and Business Brokers Act, a real estate agent can represent two parties in a transaction.

Mr. Ramal: I understand that.

Mr. Freedland: It's called dual agency.

Mr. Ramal: So you think it should be illegal.

Mr. Freedland: Absolutely. It should never be allowed. It's a conflict of interest.

Mr. Ramal: But how do you connect it with this bill? How do you relate it to this bill?

Mr. Freedland: Well, the Real Estate and Business Brokers Act should be amended. It should be amended, and dual agencies should be scrapped. The business brokers act is part of consumer legislation in Ontario. Right now they have the right to legally represent two parties in a real estate transaction. It should never, ever be legal.

The Chair: With respect, thank you, Mr. Ramal.

To the opposition side. Ms. Elliott.

Mrs. Christine Elliott (Whitby–Ajax): Thank you very much, Mr. Freedland. Based on your past experience, I'd be interested in hearing your views on what you think would be effective enforcement to put into this legislation. What would be your suggestions as we go forward?

Mr. Freedland: Again, there has to be fear. If a real estate agent knows he's facing the Real Estate Council if he does something unscrupulous, there is no fear—and this actually happened. When I called the boss of that unscrupulous real estate agent, I told him what happened and I said, "Listen. Either we settle out of court or I'm going to file a complaint with the Real Estate Council of Ontario." He said, "So what? Go ahead. I've been before them many times." He was laughing.

He had no fear of the Real Estate Council of Ontario, and I wasn't sure at the time whether he was posturing. I didn't know if he was posturing, bluffing or if he was being honest. I found out later that he was being honest. The Real Estate Council of Ontario did nothing, and my case was as clear—cut and dried. What about cases that are ambiguous?

The Chair: Thank you, Ms. Elliott. Mr. Kormos.

Mr. Kormos: Thank you, Mr. Freedland. You're too young, but Al Capp did a comic strip called *Li'l Abner*. There was a character in there called Joe Btfsplk who walked around with a cloud over his head all the time. Jeez, I don't want to be standing anywhere near you during a lightning storm, I'll tell you that.

But you were a licensed, trained real estate person. Why did you go for the double agency?

Mr. Freedland: Why did I—

Mr. Kormos: Why did you accept this agent as your agent?

Mr. Freedland: Why did I? Because I know the rules. I know what his obligations are to me as a customer versus as an agent. When he signs a dual-agency agreement, I become his client. I have a different status. If I walk in off the street and I see a real estate sign and I call him up and I want to rent a store or buy a store, I'm just a customer. There's a legal difference.

Mr. Kormos: I just wondered why you wouldn't get your own agent.

Mr. Freedland: It was a small property, and I tried to—

The Chair: Thank you, Mr. Kormos, and thank you, Mr. Freedland, for your participation and deputation today.

BOB AARON

The Chair: I would now invite our next presenter, Mr. Bob Aaron, who also comes to us in his capacity as a private individual. Mr. Aaron, as you've seen the protocol—15 minutes. I invite you to be seated. Your time begins now.

Mr. Bob Aaron: Thank you, Chair. My materials are being distributed. It's a brief presentation.

I have been a real estate lawyer for about 35 years. I'm making this presentation as someone who has a lot of experience in the real estate field. I also write a column in the *Toronto Star* in the New in Homes section, but I do not appear and speak for anybody except myself, and certainly not for the *Toronto Star* or *Torstar*.

For about four or five years, with increasing frequency in the last year or two, I've written an awful lot of articles about real estate fraud, mortgage fraud and title fraud. Lately, they have been picked up by Mr. Levy of the *Star*, only he gets page 1 and I get buried in the New in Homes section. Mr. Levy is sitting behind me, and I think some of the impetus for this legislation is the publicity that lately has been given—especially in the *Star*—to these incidents of mortgage and title fraud. I even act for one or two of these people who have been unfortunately caught up in the mess, in the morass, of title fraud.

I received a telephone call on Thursday from Minister Phillips in which he shared with me some of the material that appeared on the front page of the *Star* which has not yet made its way into any amendments to the bill, but I was thrilled to hear that he had made some proposed changes which were on the front page of the *Saturday Star*. I have attached them to my paper.

I am generally in agreement with the changes to the system, in particular the power to limit access to the ability to register deeds and mortgages to lawyers. I like the idea of having the ability to freeze the title, to send out postcards or letters to people who have recently changed their title. I believe that one important factor in the spate of mortgage frauds is that funds are being advanced too impersonally. It's possible to arrange a mortgage over the Internet. As you can see from the photograph of my dog's driver's licence on the front of my materials, it's very easy in this province to get phony ID. If Benjy can do it, my guess is that—well, it's not a guess; I know that there are people out there who show up in lawyers' offices with phony ID. It's easy to delaminate these things, put a new picture and writing inside and then laminate it back together again. It's very easy to buy these things. As a result, it's very easy to do some title transferring and fraud. Unfortunately, it's costing us and the government a lot of money.

Justice Echlin, in a recent case, which I refer to in paragraph 12, talked about the banks not doing enough due diligence, and that's very unfortunate, that it is very easy to get a mortgage these days and, as long as there seems to be some inkling of value, the banks aren't really careful. They can get their losses insured by CMHC. It's possible to take a property—I've written about a property at 33 Earl Grey Road attached to the paper. You can take

a place worth \$115,000 and keep flipping it so that it appears to be worth \$430,000, get a huge mortgage, walk away from it and the bank gets stuck with it. At 33 Earl Grey Road in Toronto—that was done to CMHC twice within a couple of years. The place was ultimately worth \$180,000, which was the price immediately after a phony sale at \$429,900. These things happen.

I'm very concerned about the ministry's ability to suspend registration of a lawyer's ability to register documents in the Teranet land registry system. If that happened, there is no appeal process, there's no hearing immediately and, as a result, if somebody walked into my office with a driver's licence with a picture on it like my dog's and completed a title fraud and I was perfectly innocent, the ministry would have the right—without even notifying me, without telling me in advance, without the opportunity for a hearing and without an appeal—to yank my ability to register in the system. Basically I would be out of business in about five minutes, with no right of appeal. I think it's unconstitutional, draconian and I'm recommending to the ministry that there be some sort of consultation with the law society, because we're tightly governed by the law society. We don't have much room within the parameters of the rules of professional conduct, but it seems to me draconian to take away somebody's livelihood without notice and without the right of appeal. I think it's contrary to the operation of law in this province.

The land titles assurance fund: The minister told me on Thursday by telephone that this is now going to become a fund of first resort instead of last resort, and I applaud that decision. I understand that you heard from Susan Lawrence today, who had her property stolen. It will help a lot of people retain title to properties which were stolen from them. The fund, the minister tells me, is going to become more user-friendly. Access is going to be streamlined. I appreciate that the fund will become a fund of first resort rather than last resort and will resolve cases with a proposed service standard of 90 to 120 days. Based on the two or three years that we've had in the past, I think that's wonderful. I applaud the decision to make this fund a fund of first resort.

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We do, however, have a problem with those people who are caught up in it already. There are 20 or 30 people who are in process. I really urge the government to, as much as possible, make the provisions of the application and the streamlining retroactive so that those people already caught up in the system will be suitably pushed along, so that they don't have to spend \$30,000 or \$40,000 of their own money to recover from the government. I'm looking forward to that.

One of the problems is power of attorney. We've seen some court cases where a forged power of attorney is used to transfer title and to mortgage properties. If somebody shows up in my office with a driver's licence, at least I have a chance. But if somebody shows up with a power of attorney, purportedly signed by their relatives or friends in Hong Kong or anywhere else, it's very diffi-

cult for me, as a real estate lawyer, to verify who signed it, and yet I'm supposed to accept that.

I understand that now the government's proposal is—and I applaud this—that a lawyer will be required to electronically sign off on the validity of the certificate. So if I, as a real estate lawyer, am not absolutely, 110% convinced that it's a valid power of attorney, I won't allow my client to use it. He's going to have to satisfy me, even if I have to call the notary in Hong Kong or anywhere else in the world to determine where and when it was signed and that the notary there or the lawyer in some foreign country—or, frankly, the lawyer anywhere else in Canada—actually checked the ID of that person. So the intention to limit the use of power of attorney on the Ontario registry system to where the lawyer is willing to sign off on its validity I think is a wonderful change. That's a change for the better and I applaud the government on that.

Finally, restrictions on access to the registry system: Access to the electronic register, the ability to register documents in Ontario, should be regarded as a privilege and not as a right. I support the government's decision to restrict access to the system to lawyers so that we who are disciplined, regulated and insured will be able to register deeds and mortgages by certifying that we have satisfied ourselves as to who the people are, that they are who they purport to be. We, of course, are responsible to the law society and our insurers. So I commend the government on its suggestion that it is going to restrict access to the legal community and that we will not allow people who are unlicensed, unregulated and uninsured to tamper with the government registry system.

Those are my comments. I thank you for your attention, and I'm here to answer any questions that you may have.

The Chair: Thank you, Mr. Aaron. We have about 90 seconds per side, beginning with Mr. Tascona of the opposition.

Mr. Tascona: Thanks very much, Mr. Aaron. I appreciate the work you do with respect to writing in the Toronto Star.

Mr. Aaron: Thank you, and I your work in your legislation, your private member's bill.

Mr. Tascona: Thank you. I find it very informative, as an aside.

The minister was kind enough to provide us—I didn't get mine till today. He wrote a letter on November 22 to members of the standing committee. Perhaps if you read the letter you may not be as enthused as what your conversation would indicate. I'll provide you a copy of that letter or the committee will provide you a copy.

Mr. Aaron: Thank you. I haven't seen it.

Mr. Tascona: With the power of attorney, he basically says, "We will also work with our stakeholders to strengthen the current standards for dealing with powers of attorney."

The amendments are supposed to be in by 10 a.m. on Tuesday. If there isn't an amendment coming forth, all I can presume is that what we're going to be dealing with

is consultation on power of attorney, which would be unfortunate, because that's the way this is drafted.

He doesn't go as far as to say, though, that the land titles assurance fund will be a fund of first resort. He's putting forth a mechanism which will be very interesting to see how it works from a mode of operation.

You've read Justice Echlin's decision. He basically said that mortgage fraud was a plague in this province. Also, he felt that something has to be done because it's a government-run system—

The Chair: With respect, Mr. Tascona, we'll have to move on to Mr. Kormos of the third party.

Mr. Kormos: Go ahead, Joe.

Mr. Tascona: What do you think about the fact that it's a government-run system and we've got mortgage fraud and it's a plague and they're not going to make this retroactive? This government knew back in 2004 there were real problems. Susan Lawrence is hanging out there. She's not going to get anything back after tomorrow in terms of real compensation for what she's gone through. Do you think the bill should have been made retroactive—

Mr. Aaron: Simple answer? Absolutely.

Mr. Tascona: Okay. Peter?

Mr. Kormos: Thank you very much, Mr. Aaron. Surely we can make the fund access retroactive.

Mr. Aaron: A hundred per cent. It has to be retroactive.

Mr. Kormos: The floodgates argument won't hold water, if I can dare put it that way, because many are already resolved. The number that are literally hanging out there in the total scheme of things isn't a whole lot.

Mr. Aaron: Well, 25 or 30. It's not a lot unless your house has been stolen.

Mr. Kormos: Exactly. It's not as if we're talking about a huge, huge, huge financial burden.

Mr. Aaron: No, it's not.

Mr. Kormos: Of course not. Thank you very much. I appreciate your analysis.

The Chair: Mr. Ramal.

Mr. Ramal: Thank you very much for your presentation. I've been listening to the opposition's questions. You don't agree with us that there has to be a starting point? We have to start from a certain point. Do you think this bill is a very important piece of legislation to protect the consumer?

Mr. Aaron: We do have a starting point. The starting point could be the earliest application that's already on file with the land titles assurance fund. I don't think we should have two classes of defrauded citizens in this province: one class for the people after the legislation and one class for the people before, so that it's Susan Lawrence's unfortunate luck that she is in the old system. I strongly think that it should be dated back to the day that the first outstanding claim was made to the land titles assurance fund.

It's not going to cost the government that much money and there are a lot of injured people. They're going to have to pay anyway, so we're not talking about whether

or not they'll be compensated; we're talking about how quickly and how streamlined. They will be compensated. Susan Lawrence will get her money. She was defrauded. It's a question of whether she gets it in 2006 or 2009. That's the only question.

The Chair: Thank you, Mr. Aaron, for your presence and deputation.

FIRST CANADIAN TITLE

CHICAGO TITLE CANADA

STEWART TITLE

The Chair: I'd invite now our next presenters, title insurers Susan Leslie, Wendy Rinella, Steven Offer and Marco Polsinelli. When you speak, you might just identify yourselves individually for the purposes of Hansard recording. You've seen the protocol. I invite you to being now.

Ms. Wendy Rinella: Thank you, Dr. Qaadri. I'm Wendy Rinella, with First Canadian Title. Thank you very much for inviting us to present today. I'm going to allow my colleagues to introduce themselves, starting at my far left.

Ms. Reta Coburn: Hi. My name is Reta Coburn. I'm senior vice-president of Chicago Title Canada.

Mr. Steven Offer: I'm Steven Offer. I'm with Chicago Title.

Mr. Marco Polsinelli: My name is Marco Polsinelli, from Stewart Title.

Ms. Susan Leslie: I'm Susan Leslie, vice-president of claims and underwriting at First Canadian Title.

Just before Wendy gets started, I did want to point out that First Canadian Title is the largest single customer of Teranet. We do approximately 25% of the registrations on the land title system in Ontario.

Ms. Rinella: Since that's a bit of a topical issue, I'd also like to note that Lawyers Title has endorsed this position, but they cannot be here today to join us.

We're not part of an association. We're actually making separate written submissions but we've come forward together today because we have some common viewpoints about Bill 152 that we want to share with you.

We appreciate the province is currently facing a political challenge of explaining why it is that the original owners of a house do not have the title restored to them after the fraud has been discovered, and furthermore, why these victims are still required to pay fraudulent mortgages. Intuitively, it just doesn't make sense.

When a car, wallet or other form of property is stolen, the victim has it returned, but not when it's your home, your most important investment. To add insult to injury, why is it that the victims have to pay the fraudulent mortgages? If a stolen car was involved in traffic violations, the victims would not have to pay the fines. So why are these title and mortgage fraud victims, as Susan Lawrence pointed out earlier, being further victimized by existing interpretations of law?

We commend and support the province's step in clarifying whether interest in real property will be valid or void. The greater the legislative clarity in the applicable sections of the act, the less likely there will need to be additional clarity through court interpretation of these new sections of Bill 152. We have been involved in a number of legal disputes, representing the interests of our insureds in the courts on whose rights are protected on title as a result of a title or mortgage fraud, and we welcome the introduction of this legislation to provide greater clarity to all parties in a fraudulent transaction.

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Title insurers are on the front line of preventing mortgage and title fraud. We have accumulated expertise in detecting title and mortgage fraud. This expertise allows us to prevent fraudulent mortgages being granted by Canadian lending institutions that cloud the title of innocent homeowners and potentially lead to increased fraud claims in the public system. We have actively encouraged all parties to the transaction—lawyers, lenders and Canadian homeowners and borrowers—to protect themselves against it.

Our companies all send representatives to the Ministry of Government Services real estate fraud committee. We have been working with this group to find solutions to issues of title and mortgage fraud in legislation and regulations. However, this is a complex area, as there are many parties to a real estate transaction including—and these are not singulars in many cases but plurals—the owner(s)/seller(s), the owners' lender(s), the buyer(s)/borrower(s) and the buyer(s)' lender(s).

These parties may also have legal representatives, so the lawyers and their E&O insurer, which in Ontario is LawPro, are also involved. Some of these parties may have title insurance and/or mortgage insurance, so there is also the contractual duty of these insurers to defend the interests of their clients.

According to the law society, 90% of residential real estate transactions were title-insured in 2005, long before title and mortgage fraud became hot issues. Title insurance protects the holder of an interest in real property, either as an owner or as a lender, by indemnifying against loss that may be suffered if title is other than as stated in the policy. It includes a duty on us to defend the insured's interest in the title in addition to the indemnity coverage.

Homeowners have bought title insurance for over a decade to protect themselves from many issues including defects, liens, encumbrances, lack of building permits and tax arrears. Title insurance for lenders protects their interest in the real property by insuring the priority, enforceability and validity of the mortgage that is registered on title.

As title insurers, we provide policies to all parties involved in a transaction, whether they be owners, borrowers, buyers or lenders, and on both sides of the equation. So for us the issue of clarity in the legislation is a priority. Clarity in Bill 152 as to whose interests are protected will dictate the timely and expeditious resolution of incidents and claims.

While we support in principle changes that prevent mortgage and title fraud, our submission focuses on the need for clarity in some provisions of the bill to ensure that the government intent is achieved in the legislative drafting. The legislation must be clear as to whose rights are protected. This clarity will allow parties to fraudulent transactions, such as title insurers, to deal with their client's needs more quickly and avoid endless litigation.

We believe that some of the proposed amendments could be further strengthened to meet the government's objectives and avoid unintended negative consequences. We would also like to make some recommendations on some key public policy questions of access and privacy, which will be dealt with in the regulations/director's orders—we're not really clear now because there's some memo out there that none of us have seen and you guys have seen, so that's a little add-on, but maybe there's a bit more information and we can get a copy of that memo too. We believe that these are important issues to raise.

I am now going to ask Susan to discuss our recommendations to provide greater clarity in Bill 152.

Ms. Leslie: As Wendy stated, all of these organizations have been participating in the real estate fraud committee. We, as members of the title insurance industry, would like to present some recommendations to you that you will likely see from other members of the real estate community, most notably the Ontario Bar Association, or the OBA, who I believe are presenting after us.

Once again, our focus is clarity. We want to make sure that we stay out of court on these files and that we can resolve claims for our customers as quickly as possible. One thing we have done, spending a lot of time with Kate Murray and her team, is work through scenarios and figure out how the law will impact various fraud scenarios that we have seen in our claims handling.

The first issue is the non-fraudulent buyer, often referred to as the bona fide purchaser. If a person has acquired title from a fraudulent person, under the bill that person's deed would be void and he/she could never be considered the registered owner of the property. This is problematic because it undermines the chain of title and the chain of ownership in the land title system. Any interest, such as a mortgage, created by that bona fide purchaser could never be valid.

The concept of traditional deferred indefeasibility: Once a person is shown on the parcel register as the owner, that person can deal with the property and would not be the fraudulent person as defined. We are requesting a change in the wording in the bill to give this assurance in the case of a bona fide purchaser for value, which would create certainty in the chain of title.

The recommendation on this issue: We support the recommendation that the definition of "fraudulent person" be amended in the Land Titles Act to exclude the non-fraudulent buyer. I should say that in our written submission we're providing specific wording on these issues, not just conceptual recommendations.

The second issue to address is the mortgage flip and the mortgagee's interest in the property after a flip. What

sometimes happens is that a fraudster will make an acquisition of a property, usually using a fake name, and then flip the property several times to inflate the value of the property, taking mortgage proceeds on every transaction, and then eventually walk away from the property once they've done this a number of times. In these cases, the only party with a legitimate claim to the property is the mortgagee who has been left holding the bag.

Unfortunately, under the bill as currently drafted, assuming that the mortgage was given by a fraudulent person using a stolen identity, that mortgage would be considered to be a fraudulent instrument and would be void. This would prevent the lender from enforcing on their interest against the property and recovering a portion of their mortgage proceeds. Providing the mortgage lender with the ability to conduct a power of sale provides resolution to the abandoned property. It's our position that this is in the public interest because it ensures ownership of the property and ensures that someone is taking control of the property and preserving the chain of title. We've seen this in Bill 128 on grow ops and the clandestine drug facilities where the lenders are being asked to take control of the property.

So our recommendation in this regard: Once again, we agree with the OBA's position that in those cases where there is no innocent owner claiming that the mortgagee's mortgage is invalid because it was fraudulent, there should be an assumption that the mortgage is valid so that the lender can enforce the mortgage, sell the property and realize on the proceeds of a sale.

Issue number three is where there's only one fraudulent party out of two or more parties to a transaction. This issue arises most often in the case of spouses, where one spouse forges another spouse's signature on a mortgage relating most often to the matrimonial home. In our experience as title insurers, we've seen a number of instances where this fact scenario plays itself out. In these cases, often the ex-spouse is saddled with the mortgage and the fraudulent spouse has taken off with the mortgage proceeds. The current case law in Ontario has developed in such a way that more often than not, that mortgage is enforceable against the fraudulent spouse's interest in the property. So in that way, the innocent spouse is not burdened by the mortgage, but the fraudulent spouse who signed their own name and forged the spouse's signature is obligated to the lender.

Our recommendation in this regard is that a fraudulent instrument shouldn't be completely invalid where one of the signatures on the document is not forged, but should still bind the interest of the person whose signature was real. We feel that this will act as a deterrent to those who might engage in this fraudulent activity.

The fourth issue that we'd like to address is privacy and fraud. We are supportive of the new regulation-making authority under the Land Titles Act that would override privacy laws in limited cases to allow the sharing of information in cases of suspected fraud. We as title insurers have accumulated expertise in detecting mortgage fraud and removing those fraud losses from the

public purse. We frequently encounter situations where we need to be able to collect, use and disclose personal information without consent for the purposes of investigating, and more often preventing and detecting, fraud.

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Through our underwriting practices, if we receive reasonable information that leads us to believe that identify fraud or mortgage fraud is about to take place, we would like to be able to share it with our customers, our lenders, our lawyer customers and also our competitors. Specifically, we would like to disclose the information on parties to the transaction—the borrower, the seller, the lawyers involved—and also the property address.

Our recommendation in this regard is that the regulations should facilitate this sharing of information and the investigation, prevention and detection of fraud so that a further option is available to companies to alert and work with other companies and other parties to limit fraudulent transactions.

The last issue to deal with is the suspension of access to the registry system. While we support the ability of the director of land titles to suspend the authorization of an electronic document submitter on the grounds indicated in the amendments to the act, we're concerned that a duped user of the system is being treated similarly to a fraudster.

As it's already been mentioned, over 100 lawyers are under investigation by the Law Society of Upper Canada for mortgage fraud. Currently, they continue to do real estate transactions while under investigation. If these individuals were all suspended immediately, there would be a number of other homebuyers and clients affected by this decision. Many of these lawyers, in our experience, have just been duped. The duped user is likely involved in many other real estate transactions, and it would jeopardize these clients and their real estate deals if the lawyer's access was suddenly and immediately suspended. With this backlog of investigations at the law society, there's a potential for havoc if all of these lawyers have their access suspended.

Our recommendation in this regard is in line with the Ontario Bar Association's recommendations that there should be a quick and speedy process to determine if the user is a dupe in a one-off transaction or a confirmed fraudster.

We thank you for the opportunity to present today and welcome your questions.

The Chair: Thank you. We have just 30 seconds each, beginning with the third party. Mr. Kormos.

Mr. Kormos: I'm particularly interested in issue 2: "mortgage flip/mortgagee interest." I'm hoping that at some point we can have ministry staff explain that concern in the context of the bill, because it makes sense. I only have 30 seconds.

Ms. Leslie: That's good.

Mr. Kormos: I wish I had more.

The Chair: Thank you, Mr. Kormos. To the government, Mr. Dhillon.

Mr. Dhillon: I don't have any questions. Thank you, folks, for your presentation.

The Chair: Thank you, Mr. Dhillon. Mr. Tascona.

Mr. Tascona: Would you have any opinion on if you were excluded as a title insurer from access to the land titles assurance fund?

Ms. Leslie: We haven't talked about it, but I don't think that we as a group have an issue with that. We're insurance companies and we take premiums for the risks we take.

Mr. Tascona: Would that affect the premiums?

Ms. Leslie: No.

Mr. Tascona: Are you sure about that?

Ms. Leslie: I'm sure from our perspective. The other companies may want to answer. Just for your information, there's never been a successful claim by a title insurance company to the fund. The fund is never paid out to a title insurance company, so it's not in our premium structure today.

The Chair: Thank you, Mr. Tascona, Ms. Leslie, Ms. Rinella, Mr. Offer and Mr. Polsinelli, for your deputation and presence on behalf of the various title insurers in Ontario and Canada.

ALAN SILVERSTEIN

The Chair: I now invite our next presenter to please come forward, Mr. Alan Silverstein. Mr. Silverstein, as you've seen the protocol, you have 15 minutes in which to make your presentation, which begins now.

Mr. Alan Silverstein: Thank you very much, Mr. Chair and members of the committee. My name is Alan Silverstein. I've been a lawyer since 1977, primarily practising real estate and mortgage law. I've been certified by the Law Society of Upper Canada as a specialist in real estate law. I'm an elected bencher of the Law Society of Upper Canada. I've spoken a number of times on mortgage fraud issues at various forums and I write occasionally for the Toronto Sun. I'm here today as a private citizen and not in any of those capacities.

What we're dealing with today in Bill 152 really is a serious policy issue, and that is the decision of choosing between two innocent victims. In most cases, we have an innocent property owner and we have an innocent purchaser. The question really is, which of the two will the law favour? Which of the two innocents is more innocent? Which of the two innocents is more deserving of legal treatment and legal protection? Unfortunately, Bill 152, and the whole concept of deferred indefeasibility, which will be restored by Bill 152, if enacted, really does very little to protect people in those circumstances and it will still favour the innocent purchaser in some circumstances.

I'm talking today about real estate fraud. We talk about mortgage fraud. It really should be called real estate fraud because there are two components to real estate fraud. There is the title theft, where the title is stolen, and mortgage fraud, where the equity is stolen. To me, real estate fraudsters are the human cockroaches of

society. Cockroaches find a fertile home until they're basically eradicated. We have to do the same here in Ontario. We have to eradicate these cockroaches from our presence. We need a two-pronged approach. We need preventive measures, and we need enforcement. Unfortunately, I don't believe that Bill 152 goes far enough in doing either of those.

I am sure you've heard about the Ontario Court of Appeal decision that sent shock waves through the province last year, about a year to this day, where the court said, "No, it doesn't require two transactions any more for a fraudulent transaction to be recognized or a registration to be recognized; we'll recognize even a fraudulent transaction if the other party is innocent—bona fide and innocent." As I said, it really did send shock waves through the province. By knocking one transaction off the requirement of validating title, what the Court of Appeal effectively did was play into the hands of the fraudsters, and all of the issues that have arisen basically have arisen since then.

Unfortunately, not much happened over the winter, spring and summer of 2006, and all of a sudden we saw two bills before the Legislature: Joe Tascona's Bill 136, on which, I will disclose, I was a consultant; and Bill 152.

Bill 152 effectively does four things:

It would reverse the Court of Appeal decision, so we'll be back to what's called deferred indefeasibility, where the second transaction would be required in order to validate a transaction involving a fraud rather than simply validating the first transaction.

It would deny lender claims against the land titles assurance fund unless lenders have demonstrated due diligence. Effectively, that is meaningless because most lenders these days get title insurance and would never look to the fund anyway.

It would deny title insurer claims against the land titles assurance fund that are derived from subrogated claims. That would effectively dump the burden of fraud on the title insurers. Whether that is right or wrong is something that will be decided, but I fear that it will have some impact on premiums.

Lastly, it would allow the director of land registration to suspend the electronic registration privileges of a submitter.

If you go through the legislation, it really is draconian because what we have here is a situation where the director of land registration becomes omnipotent. The director of land registration will decide whether or not there will be a suspension. The director of land registration will decide if there is going to be a hearing in oral or written form. The director of land registration is going to actually conduct the hearing and decide if there is going to be a revocation. To me, that's a blatant denial of natural justice, and it has to be removed from the legislation before it goes any further. It cannot stand. There's too much power being given to one person, and as we've heard, especially when you do have potentially innocent parties who are part of a transaction that is fraudulent.

What could Bill 152 do better? I'll give you a number of ideas, and they're outlined in my materials.

First, end the current system of unlimited access to the electronic registration system. We have to look to other jurisdictions. BC has a system where lawyers and notaries have to electronically sign the document. They have to certify that they witnessed the document. We don't have any of that here, even in the provisions that are being put forth in the Phillips letter.

Second, Bill 152 makes it optional whether or not notices should be sent to a former property owner or a lender when a document is registered. In Saskatchewan, that is mandatory. Bill 136 would make it mandatory.

There is no discretion to refuse a registration if the refusal could prevent fraud. New Brunswick's Land Titles Act specifically has that kind of provision. Why can't we have it here?

There is a proposal in Bill 136—not Bill 152—to have PINs, just like your PIN card when you access your bank account. It would be a simple matter to issue a number, and it would have to be used when a document was being registered.

We've talked about or referred today to the fund of first resort. I'm not going to go into more detail. On page 7, I've given you particulars of the legislation out of Alberta dealing specifically with the requirement that an original power of attorney be registered. As has been noted earlier today, the legislation or the Phillips letter doesn't specifically say that we're going to set certain standards. Here are the standards from Alberta, that you have to have an original power of attorney plus an affidavit from a witness. We don't have to look much further than to our friends to the west for some answers.

But the real essence of Bill 136 versus Bill 152 deals with the issue of registration subsequent to a fraud. Bill 152, as I said, would negate the Court of Appeal decision—by the way, there is a hearing taking place tomorrow on this very issue—but would validate subsequently registered documents. That's clear, not only from the legislation but also from the explanatory note. So we could have situations like we had prior to the Household Realty decision, where people could lose their title or be suffering from mortgage fraud because of the fact that a subsequently registered document was considered to be valid. It's a legal fiction, but that's the situation with deferred indefeasibility. The alternative would be to say that any document registered subsequent to a fraudulent document would be null and void: every document, every subsequent document—what I call “no-fraud indefeasibility.” In other words, if there's a fraud, it wipes everything clean and nothing can be supported in the future.

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That, to me, is what the public is demanding. We've heard the analogy of cars, the situation where a car is stolen and there is a need to go to the compensation fund, but title is always restored to the rightful owner. The public is saying, “Why can't we have the same thing for real estate? Why do we have to go through these legal

fictions of deferred and immediate indefeasibility where I could still end up with a document registered against my title that is valid even though I didn't sign it? I could still lose my title, even though I never signed the deed.”

I have reference in my materials to a proposal that was put forth by one of Ontario's most distinguished real estate lawyers, Laura Legge, the first female treasurer of the law society. She wrote me a couple of days ago saying she supports this concept of “no-fraud” indefeasibility because that's what the public wants. It really is what we are trying to do—to protect the public.

What we have to decide here, really, when all is said and done—we have to put politics aside. We have two pieces of legislation, but we have one public. It's really essential that you, the parliamentarians, our elected representatives, do what's in the best interests of Ontario residents. To me, that is your mandate; and to me, that is our expectation of you.

I am more than happy to answer any questions you may have regarding anything I've said or in my materials.

The Chair: Thank you, Mr. Silverstein. We have about two and a half minutes or so per side, beginning with the government. Mr. Ramal.

Mr. Ramal: Thank you very much for your presentation. You are recommending that any document shouldn't just go electronically; it should be signed by and witnessed by a lawyer before being sent to registration?

Mr. Silverstein: No. I didn't mention this, but it's in my materials at page 10. New Zealand has a provision that when a document is registered, the party who is delivering the document for registration certifies that certain things have been done. They certify that they have the authority to act on behalf of the party, they certify that reasonable steps have been taken to confirm identify and they certify that statutory requirements have been complied with. We don't have that in our legislation today. So what would happen, effectively, is that the seller's lawyer would be saying to the buyer's lawyer, “I've done my job.” We don't have to go much further than our friends in New Zealand to say, “You've got legislation that says there's certification by the seller's lawyer. Why can't we have that here in Ontario?” Then the certification process would include the affidavits.

Mr. Ramal: Do you think that will increase the cost for the consumer that way?

Mr. Silverstein: It's a statutory requirement. Affidavits were done years ago. Legal fees have not gone up at all over the last 10 or 15 years. I don't see that increasing costs at all. But it would offer safeguards to a buyer's lawyer that the seller's lawyer has done their job.

Mr. Ramal: I wonder if you were here. Before you, a gentleman was talking about real estate and that the lawyers acting on behalf of the customers are also committing fraud; and that there should be legislation to protect people from the real estate and the lawyers—

Mr. Silverstein: I'm looking at the process, and the process is that when a document is delivered electron-

ically, there is no certification or verification by the seller's lawyer of what they've done. I am saying: Why can't we look elsewhere in the world for answers? New Zealand has a wonderful answer: that the seller's lawyer makes certain representation they've done their job. It would help the fraud investigators at the law society elsewhere, because then they would have clear proof that the law was breached.

The Chair: Thank you.

Mr. Silverstein: We in Ontario don't always have to reinvent the wheel. There are good ideas out there in other jurisdictions, and we should recognize that.

The Chair: Thank you, Mr. Ramal. We move to Mr. Tascona.

Mr. Tascona: Thanks very much, and thanks for coming here today, Alan.

Looking at the situation from retroactivity, Justice Echlin's decision cried out for some justice on a government-run system where the government basically did nothing to deal with the problem and continues to do nothing. What do you think about retroactivity?

Mr. Silverstein: The public demands it, and I think it's essential that we have it. Otherwise, as my colleague Bob Aaron said, we have two classes of people: those people who, unfortunately, were victims of fraud prior to October 19, 2006, and those people who are victims of fraud after October 19. I don't think that's what we want to do in this province.

Mr. Tascona: Dealing with the treatment of lawyers in Bill 152, Bob Aaron commented on it. What are your views, in terms of treating lawyers the way they are treated, in terms of losing their livelihood without any due process?

Mr. Silverstein: As I mentioned in my materials, I am very concerned that an innocent party, an innocent lawyer—and again, we don't know what the term “submitter” means. It doesn't say “lawyer”; it's a “submitter.” It could be a title insurance company. If a title insurance company—we heard that First Canadian does 25% of the business—lost their opportunity to register, they'd be out of business.

Who is a submitter? Assuming it's a lawyer, a lawyer would be out of business without a hearing, and the same person would be deciding—

Mr. Tascona: Well, based on Phillips's letter, it's going to be a lawyer, subject to some exceptions.

Mr. Silverstein: He talks about allowing lawyers to register transfers, not mortgages necessarily, and we don't know the conditions that will be associated with it. I'm assuming there would be some conditions, so the devil's in the details, Mr. Tascona.

Mr. Tascona: Okay. Thank you.

Mr. Kormos: Thank you very much. I truly appreciate your participation in this debate, both through your published material as well as your presence here today. Again, I'm going to ask ministry staff to specifically respond to some of your proposals at some point, especially when we get to clause-by-clause; for instance, the Alberta proposal and the New Zealand proposal: in and of themselves modest, not cumbersome, not expen-

sive by any stretch of the imagination. Why did they not find favour with the ministry in the course of drafting this particular legislation?

Now, help me and everybody else here understand this: If I have title insurance and I'm a victim of fraud, I'm going to go to my title insurer for compensation.

Mr. Silverstein: Correct.

Mr. Kormos: If I don't have title insurance, then I go to the assurance fund.

Mr. Silverstein: Correct. But if you have title insurance, it's no guarantee that your title may not be lost, because if a court were to rule that your title has been lost to a bona fide purchaser, then all the title insurance company can do is compensate you or all the fund can do is compensate you, but they will not go to court and reverse the court's decision.

Mr. Kormos: Right. Two very, very separate issues, and all of us know what a pleasure it is to deal with insurance companies, trying to collect on a policy.

Mr. Silverstein: And that's why I said really the issue is, what do we want to do? Do we want to say that the public register is paramount or do we want to say that the public of Ontario is paramount? That's the decision that has to be decided, and that's what I said right at the beginning: Which of the two innocents do you want to favour, the property owner or the bona fide purchaser?

I will be very frank, and I speak from my heart. My late father-in-law was a victim of the concentration camps. His entire family was wiped out. To his dying day he could never understand how he was chosen to live and his family was chosen not to live. It is one of the toughest decisions anybody ever makes. You are asked to make that decision. Do you favour the property owner, Susan Lawrence, or do you favour the bona fide purchaser? It is a tough call and it's certainly not in the wording of the legislation, but that's effectively what you are being asked to decide upon today. It's interesting that we're talking about it in the committee on social policy. It couldn't have been a better forum.

The Chair: Thanks, Mr. Kormos, and thanks to you as well, Mr. Silverstein, for your presence and deputiation.

ONTARIO FUNERAL SERVICE ASSOCIATION

The Chair: I invite now our next presenters. They are Mr. Philip Screen and Mr. Robert McKinlay of the Ontario Funeral Service Association. Gentlemen, please be seated. You've seen the protocol, and I invite you to begin now.

Mr. Philip Screen: Thank you for hearing us on our critical issues. I'd like to introduce the two of us and our group. My name is Philip Screen. I'm a licensed funeral director in Ontario and I am the current president of the Ontario Funeral Service Association. Next to me is Mr. Rob McKinlay. He is the legislative chair of the Ontario Funeral Service Association. Our association is made up of over 240 independent, family-owned funeral homes from across the province of Ontario.

In opening, there are many measures related to our profession as funeral directors that the government has brought forward and is continuing to bring forward through regulation. We have seen many positive developments for our profession. However, we do feel the need to comment on two very critical issues, those being fairness in taxation and the educational requirements of the funeral profession. We want reforms to our profession to move forward, like licensing the many reception-type centres that have been in licensing limbo so far, but we would like to work with this committee to eliminate some of the flaws that we see in this legislation.

There are sections that still need some work, as the ministry has promised, like measures to allow one-stop shopping at funeral homes, stricter controls and monitoring of care and maintenance fund monies, and the single use versus mixed use of these facilities on cemetery grounds.

Our association, OFSA, has been an active member of this process since the Red Tape Commission process in 1997. We have been and we will continue to be willing participants. We are not willing to quit at this time when we see this act as flawed.

I'm going to turn it over to Rob to speak to taxation.

1720

Mr. Robert McKinlay: Good afternoon. The Ontario Funeral Service Association appreciates and values the opportunity to speak to your committee today. We are here to support most of the proposed legislation, but have some major concerns about a few fundamental issues of unfairness that are on the verge of now being enshrined in legislation.

To begin my presentation, I want to go back to the government's principles when they asked Justice Adams in 2000 to lead us through the Bereavement Sector Advisory Committee process. The four principles that were to be respected were: (1) options to create a single regulatory regime; (2) strengthening of consumer protection provisions; (3) clarity of rules setting out the conditions under which combinations would be permitted; and (4) measures to foster a "level playing field" for industry participants.

Our association believes the single regulatory regime will eventually come to pass. This is absolutely necessary for equal enforcement of the legislation across the bereavement sectors. Our concern is the length of time that the ministry anticipates it will take to put this piece in place.

This act will most definitely enhance consumer protection.

The rules will certainly allow the government's wish to do away with the separation of cemetery and funeral home operations and clearly allow combinations to operate legally.

The reason the OFSA is before you today is that we do not believe a level playing field has been achieved. It is our belief that to be fair, all activities that are commercial in nature require the same tax treatment. The only

exclusion would be the traditional cemetery activities of interment, entombment and the niches.

The minister has explained to us the objection of religious organizations and the municipalities to the principle of paying tax. We understand the government's dilemma. Our simple solution is, if you don't want to pay taxes, stay out of commercial enterprise. We're asking for a level playing field for property taxes. The present proposal will give all existing crematoria, both for-profit and non-profit, a property tax exemption forever, while it allows all not-for-profit municipal or religious cemeteries to open a funeral home or a visitation centre on their property without paying tax to the municipality. Rather, they will make a payment equivalent to that amount to the cemetery's care and maintenance fund, where the interest is drawn upon to beautify the cemetery.

This legislation will be a disadvantage to any new crematorium or funeral home trying to enter that marketplace. It also provides a competitive disadvantage to existing funeral homes which pay their fair share of taxes. As an independent family-owned business, we pay our fair share of taxes. The government is allowing our direct competitors to avoid paying property tax to the municipality. We ask that any group wanting to engage in a commercial venture pay their fair share. We are concerned that the visitation centres in existence on the cemetery properties now will put independent, family-run funeral homes like mine at serious disadvantage and eventually will hurry the disappearance of the family-operated funeral home. The government is legislating a competitive advantage to one group over another, which is not a level playing field.

This payment to a care and maintenance fund is a further disadvantage because the fund is used to beautify the cemetery. A beautiful cemetery will lead to more business for the visitation cemetery. It is a cycle which could lead to independent funeral homes closing shop because their competitors can avoid paying tax to the municipality and they cannot offer the same one-stop shopping that cemeteries can.

The visitation cemeteries and eventually funeral homes on cemetery property are using municipal services: sewers, water, garbage collection, fire protection etc., and ask other taxpayers in that municipality to shoulder that cost. Businesses engaging in commercial ventures should pay their fair share of taxes.

We have brought these arguments forward to the government and they have not acted on the needs of independent business in Ontario. We appeal to you to listen to our concerns.

I have a quote from Judith Andrew of the CFIB, and it says:

"Regrettably, it has come to our attention that the principle of fair competition may be compromised in rules being considered for the treatment of municipal and religious cemeteries. As these entities are property tax exempt, the issue of unfair competition arises if these so-called non-commercial cemeteries decide to engage in commercial enterprise...." This was a letter sent to Rob Dowler on October 13 of this year.

We have a solution that would be a compromise. So here is what we propose as a solution: We propose that this committee approve an amendment to this legislation. We propose an amendment with the following provisions:

Regarding commercial activities in cemeteries, like visitation centres, that all existing religious and municipal cemeteries with such facilities make a payment in lieu of property tax to their care and maintenance fund. Should the cemetery from now on decide to enter into a commercial venture, they must make a payment of property tax to the municipality. In other words, grandfather what exists, but allow no more favouritism.

Regarding crematoria, we reluctantly would agree that all existing religious and municipal crematoria can remain property-tax exempt. All other crematoria and all future crematoria must be charged property tax.

Mr. Screen: I'd just like to take two minutes and speak to the topic of education, if I could, so we can allow time for some questions.

Quickly on education, presently there is a proposal for what's called a funeral sales representative category to be added into our profession. That person would be allowed to sell to families and arrange funerals for both pre-need and at-need. We find it troubling that this needs to come about. Families come to us in a time of need when a death has occurred, when someone close to them is dying or when they want to plan their own arrangements ahead of time. These are obviously not very comfortable circumstances for most. Current statistics show there are 86,000 funerals conducted annually in Ontario, and our licensing body, the Board of Funeral Services, records less than 30 complaints each and every year. Right now in Ontario we have some of the highest standards in North America. Ontario is the leader in this area, and we, as a funeral profession, OFSA, see the need to maintain these high standards and ensure that the vulnerable consumers in Ontario are protected while purchasing funeral services, both pre-need and at-need.

I do have some instances of people who have been taken advantage of in Ontario; however, I think I'd prefer to allow time for questions.

The Chair: Thank you. We have about two and a half minutes per side, beginning with Mr. O'Toole of the opposition.

Mr. John O'Toole (Durham): Thank you very much for your presentation. I was very pleased with the work your organization has done. I know in my own riding, one of the sections—I think there are 53 statutes being amended in the bill. It sort of didn't go under a fair amount of scrutiny. I'm not sure, if the industry hadn't drawn our attention to it, how it would have changed the landscape for you. So I just want to put that on the record.

In my riding, the family-owned business is an important business when you look at the option in the future, the vertical integration of the cemeteries and the funeral directors, as well as the corporate, for-profit, share business that's emerging.

I'm pleased that you have provided an amendment. I know Rob Dowler, whom you referred to, is here. He's aware that I was a member of government at the time this thing was being discussed 10 years ago, and it's still being discussed.

I think you've made a very valid point of grandfathering. It has been an issue, the religious, not-for-profit group and the commercial—it's a commercial activity, and it's a competitive activity. Certainly your amendment, formally, if you would just repeat it: Anything would be grandfathered that exists on the not-for-profit side, the religious and municipally owned, and any new crematoria, visitation centres or on-site homes would be—

Mr. McKinlay: Yes. It would be up to the cemetery to decide whether they want to enter into a commercial venture beyond the traditional cemetery activities, and if they want to have a funeral home or if they want to have a flower shop or if they want to have a monument business or any other thing that would be a commercial venture beyond the traditional cemetery business—

Mr. O'Toole: Just in the limited time I have, just another question: When you talked about a new classification for persons selling—

The Chair: Mr. O'Toole, with respect, I will have to move on to Mr. Kormos.

Mr. Kormos: Thank you, gentlemen. I got a letter from Daniel Haine. He owns Hammond Funeral Home in Thorold, down where I come from. I've been in there many times for many funerals.

We had a House leaders' meeting today, and both the Conservative House leader, Mr. Runciman, and I talked to Mr. Bradley about what the heck this schedule was doing in this bill. It would make life so much easier for everybody if this schedule were pulled. We could then proceed on the primary thrust, which is the land title stuff and title fraud. Everybody, of course, wants to see that dealt with promptly. I did ask Mr. Bradley, "Where's this coming from? Who's driving this?" I haven't had a single phone call in my constituency office from any of the non-profit sector saying, "We want to expand, and we want to retain our non-profit status for the purpose of not paying taxes." Where's it coming from?

1730

Mr. McKinlay: There are existing examples in Ontario right now where non-profit cemeteries are offering funeral services on-site. There are plans by different for-profit and non-profit organizations, as soon as this act is in place, to go ahead with their exemptions.

Mr. Kormos: But how did they get access to the ministry? Where did the clout come from? Who's got the Polaroids? Who's got the brown envelope? How did they get their bill?

Mr. McKinlay: Well, it would be speculation on my part.

Mr. Kormos: Well, go ahead. How?

Mr. McKinlay: I feel that for years and years there has been a strong lobby. I can remember being at a committee like this 18 years ago, when the last act was put in place, and at that time there was a strong lobby by

cemeteries to have on-site funeral homes. In the wisdom of the law at that time, they decided not to do it. But continuous from then, there have been—

The Chair: With respect, Mr. Kormos, thank you. To the government side, to Mr. Ramal.

Mr. Ramal: Thank you very much for your presentation. I was listening to you carefully when you mentioned about the religious cemeteries, visitation centres and funeral homes. As you know, those religious centres have been opened on a religious basis, so I don't see how they can be in conflict and competition with you as an independent funeral home, visitation centre or cemetery. So that's the reason behind it not making profit or being in competition with you; it's to do the religious ceremonies. So can you tell me how it can be in competition with you.

Mr. McKinlay: Presently in Ontario the cemeteries do not have funeral homes, and they are operating what we call "visitation centres," which kind of just slip under the radar. They are in direct competition with the family-owned, private, independent business. If they can continue to operate in a cemetery on a non-profit basis and pay no taxes, then we don't feel that's a level playing field.

Mr. Ramal: What about the religious ceremony?

Mr. McKinlay: The religious ceremony? The religious ceremony can take place in a church or in a hall or anything, and that has been accepted as part of Ontario's tradition. It's just when it's an active commercial enterprise where they're providing visitation, embalming, caskets, all the services and products that are associated with funerals, that they are in competition with the private enterprise.

Mr. Screen: They've gone outside of their realm of the religious portion, if you will. They are now entering into—

Mr. Ramal: So you're okay with the religious portion, to hold the ceremony—

The Chair: Thank you, Mr. Ramal, and thank you, gentlemen, Mr. Screen, Mr. McKinlay, for your deputation and presence on behalf of the Ontario Funeral Service Association.

JACOB ZIEGEL

The Chair: We'll now move directly to our next presenter, and that is Professor Jacob Ziegel, whose written presentation we have in front of us. Professor Ziegel, I invite you to please be seated and begin.

Mr. Jacob Ziegel: Thank you very much, Mr. Chair. I appreciate the privilege of appearing before the committee today. I have prepared a written submission. I believe copies have been circulated.

I had feared that I might not be able to attend in person this afternoon because I've just returned from a funeral and hadn't expected to come back downtown until well after 5. However, the gods were favourable and I managed to come back somewhat earlier so that my research assistant, Mr. Carlin McGoogan, who had kindly offered

to substitute for me—he's here. He's no longer needed, but I do want to express my appreciation.

Mr. Chair, my short submission deals with the highly technical area of an act called the Ontario Personal Property Security Act. There are a substantial number of amendments that appear in schedule E to Bill 152 governing amendments to the OPPSA. All of those amendments were originally drafted and prepared by a committee of the Canadian Bar Association—Ontario, of which I was a member, and I support the amendments which, after an eight-year delay, have finally been introduced in this bill.

However, there is an important omission. One very important item that our committee recommended for inclusion in the amendments to the OPPSA was concerning the use of licences as collateral. Now, licences are extremely widely used in modern commerce, both for purchase and sale, and also as collateral for loans. In many instances, obtaining a licence is so expensive—for example, a nursing home licence, a taxi driver's licence, a tobacco grower's licence—that a buyer cannot afford to buy it without financial assistance. That financial assistance is usually secured by the banks. But the banks will not provide the financial assistance without security. The natural security for such loans is the licence itself. Unfortunately, a decision of the Ontario Court of Appeal rendered in 1989 decided that a licence did not come within the Ontario Personal Property Security Act because it did not characterize a licence as a species of property. So that was the problem: the characterization of a licence as a species of property.

To address this problem, our committee recommended in its 1998 report that we should add a small amendment to the definition of "intangible" to make it clear that "intangible" includes a licence. Also, to put to rest the concerns of some of the regulatory agencies in Ontario, we also recommended an amendment to make it clear that the giving of a licence as collateral in no way restricted the hands of the regulatory agency in denying or granting a licence in question. The members of the committee will find the 1998 committee recommendations on page 8.

We have not been given any reasons for this omission. The reason I had been given privately is that government officials felt that the issue required further study. I query whether that is an adequate explanation. Eight years have elapsed since our committee made its recommendations. Many other jurisdictions recognize that granting a security interest in licences is perfectly legitimate, as legitimate as granting a security interest in any other type of collateral. Neither I nor my colleagues have been given any reasons, in my view, that justify excluding a critically important form of collateral for modern commerce.

The current government has announced on several occasions its commitment to modernize Ontario's commercial law and to make it the most modern in Canada. I would urge your committee to take the government's commitment at face value and to test the government's good faith by recommending now the addition of this amendment to the Personal Property Security Act so that

all of the recommendations made at our committee in 1998 will be adopted and collateral in the form of licences will not continue to be excluded.

I should add, we're not talking about some abstract, theoretical problem. It's a real problem, not only in terms of what happens every day, but also in terms of the amount of litigation. There have been at least half a dozen cases I know of in Ontario, including two court of appeal decisions and at least three or four more trial court decisions, wrestling with this problem. We believe—I believe, because I'm only speaking for myself—that it's time to put the problem to rest, and it can be done easily by adopting this amendment to the definition of "intangible" in the Personal Property Security Act.

The Chair: Thank you, Professor Ziegel. Three minutes per side.

Mr. Kormos: Thank you, Professor. There's ministry staff here. Professor Ziegel makes eminent good sense—because you're talking about a licence that has value, a licence that can be bought and sold. And you're talking about protecting the security interest of a lender.

Mr. Ziegel: Well, making it valid, obviously. Unless it's valid, it has no value to the lender.

Mr. Kormos: Quite right. I, for the life of me, find that argument, albeit brief, just oh, so persuasive and good common sense. So I will be—and Mr. McNaught might help when he prepares his list of recommendations—getting leg counsel to come up with an amendment to that effect, but the government might want to do it in its own right. We'll certainly be asking, during clause-by-clause, for the government to explain why this long-standing recommendation hasn't been incorporated.

1740

Professor Ziegel is the guy who knows all this stuff. He's been doing it for a long time. He's been a master and a proponent of consumer protection in this province, and he's not charging anything today. He's here on his own time. For Pete's sake, listen to him.

The Chair: We'll move now to the government side.

Mr. Dhillon: Thank you very much, Professor Ziegel. Have you done any consultations with the Ministry of Agriculture, Food and Rural Affairs?

Mr. Ziegel: I point out in my written submission, Mr. Dhillon, that the committee, or at least some members of the committee, met with representatives of the Ministry of Agriculture back in 1999 or 2000. We discussed the issue at length. They were concerned about what the impact of the amendment would be on the regulatory powers of the licensing bodies, and we assured them that it would have absolutely no impact. But just to put their concerns totally to rest, we inserted a special clause in the proposed amendment saying that nothing in this definition would affect the granting or denial of a licence by a regulatory body.

Let me say again that we are in exactly the same position as the 50 American states that have adopted this legislation and the other provinces in Canada that have adopted PPSA legislation. They've had no problems with the use of licences as collateral. Ontario seems to be, curiously, the only province in Canada still wrestling

with the problem. So basically, we are asking, sadly, that we fall into line with the cure that has already been adopted in the other provinces.

The Chair: Mr. Tascona.

Mr. Tascona: Thanks very much for your presentation. I would just ask legislative research if they could follow up on that point by Mr. Ziegel in terms of how other jurisdictions have handled the licence issue and the definition of "intangible." I'll leave it at that.

The Chair: Thank you, Professor Ziegel, for your presence, deputation and your written submission.

CANADIAN GAMING ASSOCIATION

The Chair: I now invite our next presenter, Mr. William Rutsey, the present chief executive officer of the Canadian Gaming Association. Mr. Rutsey, welcome. As you've seen the protocol, you have 15 minutes in which to make your presentation, beginning now.

Mr. William Rutsey: Good afternoon, Mr. Chair and committee members. Thank you for inviting me to appear before your committee. I'm Bill Rutsey, the president of the Canadian Gaming Association.

The Canadian Gaming Association is a not-for-profit organization with the fundamental goal of creating balance in the public dialogue about gaming in Canada. The association's mandate is to create a better understanding of the gaming industry by bringing facts to the general public, elected officials, key decision-makers and the media through education and advocacy. The association is co-owner of Canada's premier gaming industry event, the Canadian Gaming Summit, which is taking place in Toronto this year, and the publication Canadian Gaming Business. Our members include industry-leading suppliers, operators and others engaged in the industry nation-wide. The association speaks to important national and regional issues as the voice of the industry, including commissioning and publishing national studies and surveys. We've established relationships with government agencies and industry stakeholders on multiple issues, including responsible gaming policies and practices, codes of conduct and social responsibility. Our members are licensed by gaming regulators in multiple jurisdictions across Canada and internationally to operate gaming properties and supply gaming-related products and services.

Personally, I've been in the gaming industry for almost 20 years as a senior adviser to the private sector and governments, including assisting in the creation of gaming policy and casino development in Ontario and Nova Scotia, and as the CEO of operating gaming businesses in Nevada and Ontario. I have been licensed by gaming regulators in Nevada and Ontario and have commented on gaming issues in various media and before the government.

I've been advised to keep my remarks relatively brief so as to afford the committee some time to ask me some questions.

I would say that the elephant in the room today, which Canadian law enforcement, regulators and most govern-

ments don't seem to want to talk about, is Internet gambling. So I do congratulate this government for breaking with the pack.

Let's be clear: In Canada, Internet gambling is illegal unless operated by a provincial government or agency. The Ontario government has made the policy decision not to offer gaming over the Internet. The consequence of this is that, in Ontario, Internet gambling is illegal, and those offering Internet gambling to Ontario residents and visitors are breaking the law. Under the law, it's a criminal activity. So we endorse and support the government's action with Bill 152, to ban the advertising of a criminal activity, as a good first step.

The reality today in Canada, including Ontario, is that Internet gaming is thriving and available to anyone with an Internet connection. Over the past five years, Internet gambling has almost tripled, emerging as a significant industry segment. For example, current estimated Internet gaming revenues in Ontario are equal to the combined net incomes and win contributions—that's the 20% win tax paid to the province—for the Niagara Falls, Windsor and Rama casinos. That's more than \$400 million just disappearing into the ether.

What we have in Canada today is what I like to call illusionary prohibition, a see-no-evil approach by law enforcement that has led to Canada being the host of the largest Internet gaming server park in the world, just outside of Montreal, at Kahnawake Mohawk First Nation. This lawless situation became abundantly clear last week with the arrest of major organized crime figures in Quebec. This also puts the lie to those who suggest that Internet gambling in Canada is simply a technical issue. It has been reported that the arrested organized-crime figures have been operating an illegal Internet sports gambling site, gaining over \$25 million annually in illicit profits, principally through the Kahnawake server park outside Montreal, as well as offshore.

We believe that it's time for us in Canada to get off the fence, either to start applying the current law or to begin developing a framework for the regulation of Internet gaming for three very good reasons: first, to stop the revenue leakage, including ceding large amounts of money to the criminal community; second, for many people it has become a mainstream product, and it's only fair to those above-ground organizations that finance, supply and operate Internet gaming, including many Canadian and Ontario companies; finally, it just isn't fair to our membership and the like, the bricks-and-mortar gaming industry, the people and companies who have expended great effort and dollars to earn gaming licences in multiple jurisdictions in an effort to ensure the highest level of integrity for our industry.

The bricks-and-mortar industry has worked diligently over several decades to build a strong reputation for fair games offered in safe and secure environments. Through government regulators conducting independent background checks, audits and continued due diligence, the industry has fought back and overcome the image of being the bad guys.

It's all about delivering fair games in secure environments and creating a level regulatory playing field, in contrast to the Wild West of the Internet where there is currently no real assurance of the fairness of the games, the integrity of the systems, the confidentiality of customers' personal and financial information and the payment of winnings. You can add to this the absence of responsible gaming features and controls, including controls regarding under-aged players, on many sites together with the certain knowledge that some of the online operators are criminals, including organized crime.

In conclusion, Internet gaming should be the subject of increased attention from governments and regulators in Canada. We support Bill 152 as a first step in this regard. Those who do not, seem to have either missed or have wilfully ignored the rather straightforward difference between legal and illegal activities. Thank you.

I went through that rather quickly just to see if I could keep as much time available for questions.

The Chair: Thank you, Mr. Rutsey. We have about three minutes per side. There's going to be an intervening vote, by the way, at Parliament at about 6 p.m. Mr. Leal.

Mr. Leal: Mr. Rutsey, as you know, I take a particular interest in this section of the bill because it essentially picks up on my private member's bill, Bill 60.

I want to ask a question: In terms of estimates of leakage that you talked about, what numbers are we talking about here?

Mr. Rutsey: In Ontario it's estimated as being about \$400 million annually right now. Internet gaming is projected to grow by the double digits, in the 15% to 20% range, per year. Worldwide right now, the Internet gaming market is about \$14 billion.

Mr. Leal: Part of the problem is the federal government and their lack of enforcement that clearly gaming is in contravention of the Criminal Code of Canada. Through your work, have you witnessed any movement on the federal government to take this issue seriously, as all other countries in the G8 now are taking it very seriously?

1750

Mr. Rutsey: The short answer is no.

Mr. Leal: Could you comment on the British experience? I understand they're making Internet gaming legal as a way to enforcement.

Mr. Rutsey: There are two approaches internationally. One is what's currently taking place in the United States, and I guess de facto in Canada, except that we're not really pursuing the issue here. In other jurisdictions it's regulation and taxation. In the UK, they're moving to move the business above ground—high levels of regulation and enforcement, real penalties for people who break the laws—and it will be a source of continued taxation revenue for the government there.

Mr. Leal: Thanks for your presentation.

The Chair: Mr. Tascona.

Mr. Tascona: I have no questions. Thank you for the presentation.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly. I understand your comments. I praised Mr. Leal extensively when I spoke to Bill 152 with respect to his initiative around addressing the advertising of these illegal gaming sites. It's frustrating because the Internet has changed a whole lot about our world.

It came up when we talked about film classification and the absurdity of a government trying to regulate what stuff people see or what stuff people can buy in their video stores. The fact is that the Internet has made that irrelevant, and sometimes tragically in the cases of child porn.

What jurisdictions have been successful in prosecuting illegal Internet gaming?

Mr. Rutsey: Actually, there was a successful prosecution in Canada: Starnet. The US is arresting people now and those people will be brought before the courts. There's also been action taken in Germany, where gaming executives have been arrested and organizations put on notice.

Mr. Kormos: I wonder if legislative research would help us and give us some brief illustrations of how those took place, how the investigations took place, how people were prosecuted?

Mr. Rutsey: Sure. I'd be happy to assist you with that. Just give me a call at my office.

Mr. Kormos: Thank you. I appreciate your coming.

I've got to apologize; I believe there's one more presenter. I've got a meeting of the clerk's selection committee that my party is a member of. I'm going to have to leave. I will not hear your submission. I hope you've got written material, and I will read it. It's from the funeral home sector. I think you could infer from my comments earlier that we're sympathetic to you.

The Chair: Thank you, Mr. Rutsey, for your presence and deputation on behalf of the Canadian Gaming Association.

Mr. Rutsey: Thank you.

Interjection.

The Chair: One moment. All right. There's no vote.

FUNERAL DIRECTORS FOR OPEN DIALOGUE

The Chair: We'll proceed to our next presenters: Mr. Doug Kennedy, president of Funeral Directors for Open Dialogue, and colleagues. I invite you to be seated and introduce yourselves for purposes of recording. As you've seen the protocol, I invite you to begin now.

Mr. Doug Kennedy: Thank you very much. I appreciate that. My name is Doug Kennedy. I'm president of Funeral Directors for Open Dialogue and I'm also a licensed funeral director. Beside me is Kate McMaster, who is the executive director of Open Dialogue and also a licensed funeral director.

Funeral Directors for Open Dialogue has been participating in the bereavement sector reform process since 1999. Open Dialogue represents 17 independent family-run funeral homes in the greater Toronto area, and we serve almost 9% to 10% of all the deaths in Ontario,

which go through the doors, currently, of our member funeral homes. We are grateful to be afforded the opportunity to bring our comments regarding Bill 152, and particularly to the amendments to the Funeral, Burial and Cremation Services Act.

There are only two issues we'd like to address today: first, the inequities in the application of property taxes for funeral homes and, secondly, inequities in the application of property taxes for new crematoria.

First, with regard to property taxes for funeral homes, non-commercial cemeteries, that is, cemeteries that have a non-profit charter, are religious in nature or municipal, will be able to establish funeral homes on their cemetery properties upon proclamation of the act as amended by Bill 152.

All cemeteries are exempt from property taxation, and in this new act, non-commercial cemeteries which decide to establish funeral homes on their cemetery properties will be assessed for property taxation by the Municipal Property Assessment Corp. Because these non-commercial cemeteries are not traditional taxpaying entities, the government proposes that they make a payment in lieu of taxes into their care and maintenance funds.

Care and maintenance funds are designed so that a percentage of each sale of interment rights, whether it's a grave, crypt or niche for cremated remains, are placed into the cemetery fund and the interest from those funds are then used to perpetually take care of that particular cemetery. Reportedly, 85% of the care and maintenance funds in the province are actually deficient.

The problem that exists under the current proposal is that it places storefront, independent family funeral homes at a competitive disadvantage. Funeral homes owned, operated and situated on religious, non-profit or municipal cemeteries will be taking their property tax payment and paying those dollars into their own care and maintenance fund, essentially taking money out of one pocket and placing it in the other. Storefront, independent funeral homes will never be able to change their zoning, such that they will be situated on a cemetery and will not have the same opportunity.

Cemeteries with funeral homes on-site will have access to care and maintenance monies and will be used to beautify their grounds surrounding the on-site funeral homes as well, a provision that is not available to storefront independent service providers in the funeral sector.

The larger problem is that non-commercial cemeteries already have an advantage over off-site funeral homes as they also do not pay income tax due to their non-profit or charitable status. The ministry's taxation proposals create an unlevel playing field for independents competing against non-commercial cemeteries offering funeral goods and services from their on-site funeral homes.

Further, these proposals also create an unlevel playing field in the cemetery sector as the large, active cemeteries will become more profitable and the smaller cemeteries less profitable. There will be a greater likelihood of an abandonment of small cemeteries in Ontario as they will be unable to compete with large cemeteries and unable to

generate the dollars to take care of the cemetery in perpetuity.

The unintended consequences of the proposed act the way it reads are that if a cemetery places a funeral home on-site and then lines the inside of that funeral home with niches and crypts, which are above-ground compartments used to house human bodies and cremated remains, MPAC will be forced to make a determination of predominant use of that facility, and then the decision as to whether the building's predominant use is that of a funeral home or a cemetery becomes a question. Should MPAC decide that the predominant use is that of a cemetery, then the on-site funeral home will be completely exempt from assessment and payments in lieu, even into their own care and maintenance funds. Should MPAC rule that part of that funeral home is deemed a cemetery because of the crypts and niches embedded in the walls, money from the cemetery care and maintenance fund could be used to upkeep the funeral home.

Off-site funeral homes will never be situated on a cemetery, will not be able to place crypts and niches in the building and will not be able to petition MPAC for a property tax exemption. This, in our view, is not a level playing field.

But we propose a solution. Firstly, all funeral homes, whether on or off cemetery property, should be assessed for property taxation purposes and should pay their fair share of taxes into the municipality. Property taxpayers of the community should not be forced to subsidize cemeteries that choose to conduct commercial business.

Secondly, funeral homes situated on cemetery property should be prohibited from lining their walls with crypts and niches in order to skirt property taxation or gain access to care and maintenance funds for funeral home upkeep. On-site funeral facilities should serve the sole purpose of offering and delivering funeral goods and services, preventing assessment of the facility from being blurred in the eyes of the MPAC folks.

I'm going to ask Kate, my colleague, to continue with the inequities with regard to crematoria.

Ms. Kate McMaster: Mr. Chair, thank you for providing us the opportunity to speak to the committee today. Committee members, thank you.

I'd like to talk about our second point in terms of taxation, which is inequities in the application of property taxes for crematoria.

Currently, it is proposed in Bill 152 that existing crematoria will remain tax-exempt while newly established crematoria will be fully taxable from a property tax perspective.

Of course, the problem here is that independent funeral homes, and others in the sector wishing to establish crematoria under this new act, will be fully taxable from a property tax perspective, so that new entrants who will be competing with established crematoria will again be at a disadvantage because the established crematoria will enjoy a property tax exemption.

The greater problem then, however, is that existing religious cemeteries, we understand, need the revenue generated from their current on-site crematoriums to sup-

port the care and maintenance of their cemeteries. Clearly, religious cemeteries cannot afford to pay taxes for their cremation facilities and still generate the necessary funds for cemetery care and maintenance.

In terms of unintended consequences, however, the ministry's property tax proposal in Bill 152 for crematoria will discourage new entrants from establishing new cremation services businesses in the sector, as they will be forced to compete with property and income-tax-exempt cremation providers who are already established in the community.

So what in fact is the solution? What we propose is that the ministry would legislate that all crematoria, whether existing or newly established, on or off cemetery property, pay property taxes to the municipality in which they are situated. But then, of course, you wonder what we should do about the religious crematoria. Our organization supports that religious crematoria would be given a property tax exemption as long as they serve their religious constituency exclusively.

Finally, just to support one of the proposals put forth by our colleagues at the Ontario Funeral Services Association, I would like to briefly mention the fact that one of the proposals currently put forward by the ministry in terms of licensing for funeral personnel is including a watering down of the funeral director's licence to allow for sales licences—licensed sales representatives in the funeral services sector for at-need families and pre-need families.

Again, I think that it would be prudent for the Legislature and the members of the Legislative Assembly to consider how they would feel having commissioned sales forces working with families who are in need of funeral goods and services, both at-need and pre-need.

Finally, I do want to thank you, Mr. Chair, for allowing us to come before the committee today to present our concerns regarding Bill 152's amendments to the Funeral, Burial and Cremation Services Act, 2002. We ask that you and the members of the committee would give consideration to the issues we have raised today, and we ask that you would recommend that Bill 152 be amended to achieve a level playing field from a property tax perspective in the bereavement sector. Thank you, and at this time, if there are any questions, we would be pleased to address them.

The Chair: Thank you, Ms. McMaster. We'll have about two minutes per side, beginning with Mr. Tascona.

Mr. Tascona: I don't have any questions. I think it's pretty straightforward, and I appreciate your presentation. Thank you.

The Chair: To the government side. Mr. Dhillon.

Mr. Dhillon: Thank you very much for your presentation. I have no questions. Thank you.

The Chair: Thanks again, Ms. McMaster, as well as you, Mr. Kennedy, for your deputation on behalf of Funeral Directors for Open Dialogue.

This committee stands adjourned, unless there's any further business, until hearings tomorrow in this room at 3:30.

The committee adjourned at 1804.

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Also taking part / Autres participants et participantes

Ms. Kate Murray, director, title and survey services office, Service Ontario

Mrs. Christine Elliott (Whitby–Ajax PC)

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Mr. Trevor Day

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Mr. Andrew McNaught, research officer,
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Standing committee on social policy

Ministry of Government Services
Consumer Protection and Service
Modernization Act, 2006

Comité permanent de la politique sociale

Loi de 2006 du ministère
des Services gouvernementaux
sur la modernisation des services
et de la protection
du consommateur

Chair: Shafiq Qaadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 28 November 2006

Mardi 28 novembre 2006

*The committee met at 1533 in committee room 1.*MINISTRY OF GOVERNMENT SERVICES
CONSUMER PROTECTION AND SERVICE
MODERNIZATION ACT, 2006LOI DE 2006 DU MINISTÈRE
DES SERVICES GOUVERNEMENTAUX
SUR LA MODERNISATION DES SERVICES
ET DE LA PROTECTION
DU CONSOMMATEUR

Consideration of Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services / Projet de loi 152, Loi visant à moderniser diverses lois qui relèvent du ministère des Services gouvernementaux ou qui le touchent.

CINEPLEX ENTERTAINMENT

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, I call the meeting of the standing committee on social policy to order. As you're aware, we're here for hearings on Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services.

I would proceed immediately to invite our first presenter of the day, Mr. Fab Stanghieri, vice-president of Cineplex Entertainment. I'd invite you to come forward, Mr. Stanghieri. Please be seated. For you, as well as for all our participants this afternoon, the protocol is that you'll have 15 minutes in which to make your presentation. Within that, if there's time remaining after your formal remarks, it'll be distributed evenly amongst the parties for various questions. I invite you to begin now.

Mr. Fab Stanghieri: Mr. Chairperson and members of the committee, good afternoon. Thank you for allowing me this opportunity to come before you to speak about Bill 152.

My name is Fab Stanghieri and I am the vice-president of real estate and corporate planning for Cineplex Entertainment. On behalf of Cineplex, I'd like to voice our support for the many positive elements in this bill which advance consumer protection and consumer choice.

One of the most notable aspects of the bill for Cineplex is the sections that deal with gift cards. Cineplex recently launched its gift card program on November 19

of this year, a short while before these changes were announced. As a result, these new cards carry an inactivity charge of \$2 per month after a 24-month period of inactivity.

The Retail Council of Canada, which we are members of, has been working closely with the government to ensure that our customers are protected and that businesses are able to address the technical and implementation issues associated with this measure. There is no doubt, though, that Cineplex will be forced to bear significant expense to make the required adjustments to the new gift card system.

I'd also like to take this time to talk about another area of concern for Cineplex, namely the regulatory amendments to the Liquor Licence Act. While I understand that these regulations will not be decided upon today, I appreciate the opportunity to comment on them.

When announcing these amendments, the government said that it would consider pilot projects to license bingo halls and to extend liquor licences at wineries to include vineyards.

Cineplex has been proposing a pilot project to license the VIP auditoriums at the Cineplex Manulife Centre Varsity Cinemas, located at Bay and Bloor. The Varsity Cinema is a unique 12-screen movie theatre complex within the Manulife Centre. The theatre is one-of-a-kind in that it has four VIP screening rooms that exhibit upscale art films geared to an older demographic with a premium price point. We see direct similarities between our proposal and the Liquor Licence Act reforms in Bill 152, specifically as they relate to bingo halls and wineries.

In making the initial announcement regarding these reforms, Minister Phillips noted that the government will consider licensing bingo halls because bingo is adult-centred entertainment and is an industry facing declining revenues, and because these operations are already licensed by the Alcohol and Gaming Commission of Ontario. Cineplex's proposal to license the VIP theatres is based on the same reasoning as it relates to the Varsity and the adult-centred clientele that frequent the VIP screening rooms. The VIP rooms that are in question here are four separate rooms from the balance of the complex, and they generally exhibit adult, genre-based art films.

Mr. Peter Kormos (Niagara Centre): Is that code?

Mr. Stanghieri: Is that code? No. In our industry, you would not see a Happy Feet picture, for example, which

is geared to a very young demographic. You would see a Little Miss Sunshine. You would see more adult pictures, like The Notebook.

Like the proposed changes to winery and bingo licences, Cineplex's pilot project is proposed in response to consumer feedback. Our patrons in the 35-plus age demographic have been clear in telling us that they would like to be able to enjoy a glass of wine or beer while watching a film.

Also consistent with the government's proposal, this facility is currently licensed by the AGCO. Our Varsity Theatre hosts a licensed section just outside of the VIP theatres. This area has been successfully operated for over one year without any incidents to report. We are requesting that our existing licence be extended to include the VIP theatres.

There is no unique risk associated with this proposal in terms of underage drinking or irresponsible serving. The Varsity VIP theatres are not typical multiplex theatre auditoriums, which you would see in suburban parts of Ontario. What makes it unique is that there are four VIP theatres at the Varsity complex, the only ones of their kind in Canada. These auditoriums hold a maximum capacity of 35 patrons and tickets are sold at a premium price point, which tends to result in a more mature audience. I've attached a picture of a VIP theatre for you in the package which is submitted to the committee to demonstrate how different these theatres are from the traditional multiplex theatres.

Under the pilot project, these theatres will be restricted to those 19 years and older. We will rely on the effective policies that we have in place at our licensed bar area to maintain our record as responsible servers and to prevent underage drinking. Moreover, this facility caters to an older age demographic. This is evidenced in our film selections, interior decor, concession stand offerings and the lack of other entertainment offerings that are generally geared to young children and families, such as arcades.

We recently had officials from the Alcohol and Gaming Commission of Ontario, including CEO Jean Major, tour the facility. According to them, a licence could easily be issued for these theatres considering the safety precautions in place and the layout of the facility.

Cineplex has extensive experience in managing similar licences in other jurisdictions. For instance, we have been running a pilot project at the SilverCity in the West Edmonton Mall since January 2006, and there have been no incidents to report. The West Edmonton Mall pilot is similar in that the auditoriums are restricted to patrons over the legal drinking age.

We would like to offer this to our customers because we have to, effectively. The movie theatre industry is suffering from declining attendance, sales and box office revenues. In fact, there has been a 14% decrease in attendance since 2003, and Statistics Canada reports that movie theatre profits fell 15.8% in 2003-04. Exhibitors are also experiencing enormous competitive pressure from other entertainment destinations and in-home enter-

tainment options such as DVDs, videos, online streaming, video-on-demand, pay-per-view and the ever-growing problem of piracy.

Ironically, the industry is at a point where theatres will have to make significant capital investments in order to keep up with technology and to comply with accessibility standards. For example, within five years, projection will have to be transferred to digital technology, at a cost of approximately \$150,000 per screen. That five-year window would actually commence within the next year or two and it would be a rollout over a five-year period.

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In order to attract customers, Cineplex has made a tremendous effort to meet and exceed our individual customers' expectations. Among other initiatives, we now show NHL hockey games on screen and we're introducing opera performances from the Met. Our intention with the Varsity VIP proposal is to enhance the entertainment experience for a segment of our patronage and to compete on equal footing with similar entertainment destinations, including sports arenas, concerts, in-home entertainment and now bingo halls.

We ask that you consider an amendment to the Liquor Licence Act regulations to include licensing of these select auditoriums.

Thank you for your time. I'll do my best to address whatever questions you may have.

The Chair: Thank you, Mr. Stanghieri. We have about two and a half minutes or so per side, beginning with the opposition.

Mr. Joseph N. Tascona (Barrie-Simcoe-Bradford): Thanks very much. I appreciate your presentation.

With the gift card, I'm not really clear on what you're asking for, because I know the government says that they're going to work with the industry and have regulations. You currently have a two-year time limit. Are you looking to be exempt from having the time limit removed from your gift card or are you looking for time to adjust your situation?

Mr. Stanghieri: We just want to be on record that we are supporting the Retail Council of Canada and their position on the gift card programs.

Mr. Tascona: Which is?

Mr. Stanghieri: That they will work with the industry to come up with technical regulations so that the implementation will be easily absorbed by retailers and groups like ourselves.

Mr. Tascona: Okay. With respect to theatres, where would those 19 years and older be drinking? Throughout the theatre? Or would they just be drinking in an enclosed area?

Mr. Stanghieri: The Varsity theatre has a licensed lounge area now just outside of the VIP areas. The theatre is a 12-plex, but if you walk in, immediately to your left are four segregated VIP theatres, which have their own ticket-taker, and in behind those are the areas for the lounge. What we are asking for is that you can purchase your beverage at the lounge and take it into the auditorium with you and consume it during the movie.

The VIP theatres are very different than a traditional movie theatre, in that you have a side table, they are very small auditoriums of approximately—the smallest, I believe, is 25 seats and the largest has 35 seats. It's a very cozy environment, for which you're paying a \$4 service charge. Today it is, for the most part, servicing an older clientele with the product that we put in there. Our plan is to make it only available to those 19 and older.

The Chair: Thank you, Mr. Tascona. Mr. Kormos?

Mr. Kormos: Thank you very much. I don't know. Look, if you've already got the ear of Jean Major, you're halfway there, because the government will permit beverages in your theatres by regulation. It doesn't require the Legislature, and I'm not sure that anybody's going to quibble much. I don't think anybody would agree with the proposition of having a licensed theatre unless it was an adult movie, to wit, having children in there too. I don't think anybody's proposing that. You're not proposing that.

Mr. Stanghieri: We are not proposing that. We actually see that as a risk. We are a family-based entertainment. As moviegoers, a large part of our attendees are families and/or young kids under the age of 14.

Mr. Kormos: But people go to the live theatre and they have a drink at intermission.

Mr. Stanghieri: People also go to the Playdium in Mississauga, which is a giant arcade, and have the benefit of having a beer while they're walking and playing arcade games.

Mr. Kormos: What about bring your own wine?

Mr. Stanghieri: We've never considered that and we will not consider that. But what we are proposing is that we would serve only Ontario wines.

Mr. Kormos: That's a start.

Now the gift cards: You don't seem to like the proposition of having to carry a liability on your books for more than a specified period of time.

Mr. Stanghieri: Well, for us, we're looking at it as an administrative charge of \$2 per month once the inactivity charge kicks in after the 24-month period—

Mr. Kormos: Horsefeathers. What expense is there for you to have that on your books with computerized bookkeeping?

Mr. Stanghieri: Well, it is an additional charge for our accounting group to account for that liability—

Mr. Kormos: It's on a computer. Nobody's entering it. There isn't a clerk with a quill pen entering the \$20 gift certificate. That's pretty disingenuous.

Mr. Stanghieri: I'm not going to argue with you over the processes we have in our accounting policies. All I can say is that those are the policies we have in place. It is an inactivity charge, and we hope that we never have to discharge those cards for inactivity. We want for people to use those cards as often as they possibly can, to reload them and recharge them and use them as we have intended them to be used.

The Chair: Thank you, Mr. Kormos. Mr. Dhillon.

Mr. Vic Dhillon (Brampton West–Mississauga): Thank you for your presentation. What would the premium price be for the tickets?

Mr. Stanghieri: The current premium price point is a \$4 service charge on top of the existing \$11.95. The theatre is actually the most expensive theatre we have in terms of price point for all of Canada, and it is also wildly successful with people who are looking for an upscale movie-going experience, where they can have a cocktail in the lounge and then move into the auditorium. It's also one of the homes of the film festival. A lot of screenings are done there for the festival, so it is the type of clientele that is not looking for the SilverCity experience you would find in, say, Brampton, Thunder Bay or Mississauga, which is geared to the children of the community. We're working with a much more upscale demographic.

Mr. Dhillon: Do you not think that there would be disruptive behaviour with people consuming alcohol, even if they're over 19?

Mr. Stanghieri: That is a risk that we considered when coming up with how this program would work, and it is a risk that we cannot afford to take. The limit on beverages is two per person coming into the complex. We don't want yahoos who are going to be coming in under the influence. Our company puts through 60 million people a year, and the last thing we need is to have disruptive environments for people who are trying to escape their day-to-day lives and immerse themselves in a movie. So that is not an option.

With 35 people in an auditorium and regular checks, we don't foresee that being a problem. In the Edmonton pilot study we've actually seen that most people will buy a cocktail on the way in. No one will leave a movie in the middle of—if you're watching James Bond, you won't step out to buy another beer. What we would like is for you to have a cocktail—

Mr. Kormos: Not with the review I read.

Mr. Stanghieri: The ideal is to have a cocktail on the way into the movie and then possibly talk about the movie afterwards within our lounge.

The Chair: Mr. Leal.

Mr. Jeff Leal (Peterborough): Thank you, Mr. Chair.

The Chair: Very briefly.

Mr. Leal: It will be brief. How many gift cards would your organization issue in any given year?

Mr. Stanghieri: It's difficult to state at this point. The program was introduced only a few weeks ago and we're hoping it's wildly successful. We have no idea at this point how many gift cards we will issue.

Mr. Leal: What's your market estimate? If you're going to put in a new program, you have projections. What's your projection?

Mr. Stanghieri: I don't have those available with me now. The person who's responsible for that is actually on vacation, but back on Thursday. I can easily provide you with that information.

Mr. Leal: Could you provide that information to the committee—

The Chair: Thank you, Mr. Leal, and thanks to you as well, Mr. Stanghieri, for your presentation on behalf of Cineplex Entertainment.

TORONTO BOARD OF TRADE

The Chair: I now invite our next presenters, Mr. Norm Tulsiani and Prema Thiele of the Toronto Board of Trade. As you've seen the protocol, you have 15 minutes in which to make the combined presentation, with time remaining to be distributed evenly. I'd invite you to be seated. Please begin.

Ms. Prema Thiele: Thank you very much for the opportunity to address this committee. I'm Prema Thiele. I am the chair of the Toronto Board of Trade's business affairs committee. Also, I partner with the law firm of Borden Ladner Gervais in Toronto. With me today is Norm Tulsiani, who is the board of trade's in-house legal counsel and policy adviser to the business affairs committee.

Although Bill 152 is obviously very detailed legislation, covering a range of issues, the board's comments today are focused on amendments to the Business Corporations Act set out in schedule B.

The board supports many of the proposed changes to the act. We applaud the provincial government for undertaking this important initiative to modernize Ontario's corporate law regime. The Business Corporations Act regulates how many Ontario businesses, both large and small, are organized. It's the backbone of Ontario's business law infrastructure.

While the board of trade supports many of the changes proposed in Bill 152, we also believe that the legislation, as currently drafted, does not go far enough in certain areas and is somewhat ambiguous in others. We have some specific concerns with what some provisions of the bill propose to do, but more importantly, we have greater concerns about what the bill fails to do.

We want to start with what we believe is a significant missed opportunity in this bill, and it's in the area of unlimited liability corporations, better known as ULCs.

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The Toronto Board of Trade has been a long-standing proponent of allowing Ontario businesses to incorporate as unlimited liability corporations. Essentially, a ULC is like any other corporation, with the exception that the shareholders have unlimited, rather than limited, liability. US-based companies seeking to do business in Canada particularly favour the ULC model. That's because when organizing their Canadian operations as a ULC rather than as a traditional limited liability corporation, US companies are afforded certain tax advantages in the US.

For many years, Nova Scotia was the only province in Canada that recognized ULCs as a business structure, and by doing so, it was successful in attracting a lot of investment into that province. Partly in response to Nova Scotia's success, last year Alberta amended its corporate

legislation to recognize ULCs. Ontario has yet to take any steps to recognize ULCs, and I think it's fair to say that this has resulted in a number of US-based companies, who would otherwise have located their Canadian operations in Ontario, establishing their businesses in Nova Scotia or Alberta.

The Toronto Board of Trade has urged the provincial government since 1998 to recognize ULCs, and we believe it's time to do so now. Failure to act now will likely lead to this issue being deferred for several more years. I think Ontario must take the lead of Nova Scotia and Alberta or risk losing more investment opportunities. For your reference, we've attached further details in letters that we have submitted to the Minister of Government Services, if you wish to look at those.

The second point is director's residency. Subsection 19(2) of the bill proposes to amend the current OBCA by eliminating the requirement that a majority of directors of a corporation be resident Canadian, but it replaces it with a requirement that 25% of the directors still be resident Canadian; the Toronto Board of Trade believes that this is a step in the right direction, but again, it doesn't go far enough. We agree with the Ministry of Government Services consultation paper, in phase I, that said that in the case of private corporations—those whose shares are not publicly traded—the current requirement to have a majority of resident Canadian directors is readily avoided through mechanisms such as unanimous shareholders agreements. As such, it serves no useful purpose, we believe, to put corporations through hoops to have resident Canadian directors.

We note that section 20 of the bill would eliminate the requirement that a majority of directors at a meeting be resident Canadians in order to transact business. This, in effect, permits the non-resident directors to transact business without the input of any Canadian colleagues. While we welcome this added flexibility, we note that it appears to be inconsistent with the goal of having Canadian input on business decisions.

Many countries have moved away from a protectionist approach to one that embraces a global economy. We note that director residency requirements are not common in other jurisdictions, particularly with our major trading partners in the US and the UK, so we feel that the requirement may have served a useful purpose in a protectionist era but it's outdated in today's world.

Thirdly, we'd like to address the conflict-of-interest rules for directors and officers. Bill 152, in subsection 23(1), proposes to amend the act to prohibit directors who have a conflict of interest in relation to a particular matter from taking part in discussions regarding the issue. We certainly understand that this change may be serving to improve governance standards, but while we support efforts to implement meaningful governance standards, we believe that the proposed amendment would in fact diminish the quality of decision-making of directors and officers. This is because many directors who are conflicted have a wealth of knowledge, information and expertise about the matter being discussed.

We agree that such directors ought to declare their conflict and should not vote on a final decision. However, we believe that notwithstanding the possibility of undue influence, in the majority of cases the interested directors will have valuable and knowledgeable information to share with other directors. So, for practical reasons, we believe that a model under which the other directors and officers have the discretion to hear from a conflicted director is preferable to one where such input is just summarily prohibited by legislation.

We also disagree with the proposed amendment because it continues an exemption from the same requirement we're talking about that allows management staff executives who are also directors to vote on their own remuneration. Consistent with our recommendation above, we believe that such management executives should be permitted to provide information and input on their remuneration but should be excluded from the final deliberations and the vote. So in this legislation, continuing this exemption will only make it that much more difficult to achieve meaningful conflict-of-interest regulation.

We also note that there seems to be a discrepancy in the explanatory note and the bill, in that the note indicates that all directors are going to be prohibited from voting on their own remuneration, and that's not what the bill says.

Lastly, directors' liability and the availability of the due diligence defence: Obviously, serving as an officer or director carries with it significant potential legal liability. Under the law, directors may properly shield themselves from potential liability if they can prove that they acted with due diligence. Section 25 of the bill proposes to expand the availability of the due diligence defence in respect of a director's reliance on certain reports and other's advice. The question we have is that although we assume that the intent of the bill is to expand the availability of the defence, if that's the case, we certainly support the amendment and note that there may be a drafting error that can be remedied easily, and we're happy to work with the committee members and staff offline to remedy this. If, however, the intent of the bill is to take away the availability of the due diligence defence with respect to a director's fiduciary duty and general standard of care, then the Toronto Board of Trade is gravely concerned. We believe that such a detrimental change would significantly hamper the efforts of companies to recruit the best-qualified and most talented directors. Accordingly, that should be removed from the bill. Obviously, we seek clarification on what the intent is of this provision.

I know we're running out of time here, but we have some other comments, a few of them that are technical in nature, and drafting errors. So what we have done in appendix B is indicate what those comments are, and we'd be happy to work with the committee or other staff members to address those points.

We support, obviously, the modernization of corporate law in Ontario, and it's consistent with what the board

believes in. We hope that the proposed amendments outlined in the bill, together with these further changes, will improve Ontario's business law.

I'd be happy to address any questions.

The Chair: Thank you very much, Ms. Thiele. We have about a minute and a half per side, beginning with the third party.

Mr. Kormos: Thank you, folks. Interesting stuff. Mr. McNaught, the issue around subsections 134(1) and (2), and the reference to 134(2) and not to 134(1): Could you respond, perhaps with the collaboration of ministry staff, to that very specific question? Because it's an interesting proposition.

Also, from a policy point of view, the ULCs—these are very similar to income trusts, where—

Ms. Thiele: No.

Mr. Kormos: Not at all?

Ms. Thiele: No. It's just another form of business organization. You can either incorporate a company or you can form a partnership or you can have a sole proprietorship or you can have an unlimited liability company. For Canadian purposes, it's a corporation—

Mr. Kormos: No, I understand, but you have a limited liability of the shareholders.

Ms. Thiele: Right.

Mr. Kormos: So the shareholder has higher exposure.

Ms. Thiele: Correct.

Mr. Kormos: But they get a tax advantage on the income.

Ms. Thiele: In the US.

Mr. Kormos: In the US. So that's why I say in that respect they're similar to income trusts.

Ms. Thiele: Well, I wouldn't put income trusts in the same category.

Mr. Kormos: Well, in 2010 it's all done and over with anyway.

Ms. Thiele: It's all gone in 2010, I agree.

Mr. Kormos: But most of them were scams anyway. They were inflated prices. They were the closest thing you ever saw to pyramid schemes, honest to God. Thank goodness somebody had the courage to put an end to them.

What we need, if I may, are some policy reasons in terms of these ULCs, which I've never heard of before today; a little bit of a better understanding of what these ULCs are and what is the Ontario policy reason for not recognizing—

The Chair: Thank you, Mr. Kormos. I will now offer it to the government side.

Mr. Leal: I appreciate your presentation. You talked about businesses that have left Ontario to go to Nova Scotia because of the treatment down there, and potential US businesses that would have come to Ontario to establish their presence here but went to Nova Scotia. I'd like to get some data on those numbers. Is that possible?

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Ms. Thiele: I don't think that would be possible because—I mean, it's an incorporation decision. So you would have to be in the minds of every US entity that's—

I'm a corporate lawyer and about 70% of my practice is cross-border. So you'd have to go into the mind of every corporation that may have established a subsidiary in Canada. You wouldn't be able to tell which decided to go to Nova Scotia. What I can tell you, though, is that if you use my practice, which, as I said, is primarily cross-border, it's very significant, because in the US, the treatment of a ULC, for the monies that go across the border, is something called check-the-box treatment. That means that they can be treated as a partnership income in the US, which is obviously significant savings and—

The Chair: Thank you, Mr. Leal. To the official opposition.

Mr. John O'Toole (Durham): Thank you very much. I did miss some of your presentation but I got enough from the questions that have been asked around the same line. I need to understand more clearly: Does it create problems for trade between countries that do have unlimited liability, either on the market side or on the actual business-to-business relationship side?

Ms. Thiele: In a sense of problems, trade, do you mean like a much—

Mr. O'Toole: For tax and other reasons for investment. You make that point. What is it, a shared liability?

Ms. Thiele: No. Instead of the shareholders being shielded from liability, they are completely liable.

Mr. O'Toole: They're exposed. That's what I mean. It's shared liability right across the investor, owner, operator, principal, whatever.

Ms. Thiele: Right.

Mr. O'Toole: Are there any transactional issues between jurisdictions, meaning an American parent company wanting to open a business here?

Ms. Thiele: The issue is that when they're deciding where to incorporate and set up, they're obviously looking at tax as the first reason. Where is going to be the best tax treatment? And if they do a ULC in Nova Scotia or Alberta, they can have a much better tax treatment and regime. In fact, in Nova Scotia, they don't have a director residency requirement. So not only do we have ULCs in Nova Scotia, but we've got no resident directors. So why would they come to Ontario and set up if we have a few more hoops to go through, and more significant hoops to go through, to achieve the same thing when they can just do it in Nova Scotia?

Mr. O'Toole: It's interesting; today there was a statement by the minister, Sandra Pupatello, with respect to competitiveness between Alberta and Ontario. They're using other issues. Specifically, this wasn't mentioned, but certainly energy is the growing and hot economy in Canada.

Ms. Thiele: And Alberta has recognized it by changing their statute last year and including this.

Mr. O'Toole: Yes, I see that in your note here. Thank you for your presentation. It helps all of us.

I would have to say I agree that I think Mr. Flaherty did the right thing in terms of the income trusts. I'd have to say it was a wise decision on his part.

The Chair: Thank you, Ms. Thiele and Mr. Tulsiani, for your deputation and presence on behalf of the Toronto Board of Trade.

ROGERS COMMUNICATIONS INC.

TELUS

The Chair: I invite now our next presenters, Mr. John Armstrong and Mr. Howard Slawner of Rogers Communications Inc., and Mr. Ian Bacque. Gentlemen, please be seated. As you've seen the protocol, you have 15 minutes in which to make your presentation, and I invite you to begin now.

Mr. John Armstrong: Thank you, Mr. Chairman and members of the committee. My name is John Armstrong. I'm the director of municipal and industry relations for Rogers Communications. Appearing with me this afternoon is Howard Slawner, director of regulatory matters for Rogers Communications, and Ian Bacque of Telus.

I'd like to note that the views I express here today are supported by both Telus and by Bell Mobility. Unfortunately, due to other commitments, a representative of Bell was unable to join us today.

My comments will be brief and then I will turn the microphone over to my colleague Mr. Bacque.

Rogers, Telus and Bell Mobility have reviewed Bill 152, and whereas our three companies are normally very intense competitors and we often take divergent views on matters, we find ourselves aligned with respect to concerns over one aspect of Bill 152. That aspect deals with the legislation around gift cards. More specifically, we are concerned that the legislation could capture a broader cross-section of prepaid cards than what may have been originally contemplated.

One of the primary methods used by wireless carriers to offer services and bill customers is through the use of prepaid cards. In effect, a customer purchases a card, either physically or digitally, and the dollar value purchased is placed on to the customer's account. The account is drawn down upon as the customer uses the minutes.

It's our collective submission that wireless prepaid cards are not gift cards in the traditional retail definition. Gift cards are generally bought by one person and are given to another person as a gift. Wireless prepaid cards are generally not given as a gift by one person to another; rather, they are generally bought and used by the end consumer. This is a significant point of differentiation between the two products. A customer who buys a wireless prepaid card is aware of the terms and conditions associated with it, and he or she buys the prepaid card usually with the expectation to use it almost immediately. In essence, the customer is buying the prepaid card as a tool to manage his or her costs associated with his or her personal usage of wireless telecommunications services.

Another important differentiation is that gift cards are essentially cash equivalents, whereas wireless prepaid cards are not. Customers exchange money for an equal value in gift cards. They then use the gift card to pur-

chase products and services in the same manner they would otherwise have used cash. On the other hand, a prepaid wireless card is essentially a billing mechanism that the carriers use to charge customers for a distinct service. A customer buys a prepaid card, activates it and thereby triggers the alignment of the wireless network with the associated billing systems. This alignment ensures that both the customer and the carriers understand how much usage is permitted by individual customers at a given rate. The purchase of a prepaid card is, therefore, a mandatory component for the provision of this wireless service.

The nature of the service purchased through a wireless prepaid card is also very different than most of the items purchased with traditional gift cards. For example, a gift card issued by a clothing retailer can be redeemed for potentially thousands of different clothing items. A prepaid wireless card is an actual purchase of one specific item, that is, minutes of airtime on a wireless telecommunications network over a defined period of time.

Unlike the clothing retailer who doesn't necessarily need to increase inventory because of the number of gift cards sold, wireless carriers must manage their network capacity, understanding the number of calls that may be attempted at any one time. It is, therefore, crucial that we have the tools to manage the usage of the wireless network by prepaid customers. The time limitation associated with a wireless prepaid card is an essential network management tool.

Wireless carriers also make provisions for our customers to keep and maintain unused airtime that they have purchased. If the airtime is not entirely used up in one month, the customer can roll the unused airtime over to the following month by activating a new prepaid card. As long as they maintain their active status, they do not lose their minutes. In fact, wireless carriers will contact customers when their cards are close to expiry to remind them to activate a new card in order to preserve their existing minutes.

Another differentiation between prepaid cards and gift cards is that even though the customer is only charged for consuming minutes of airtime, the carriers do in fact provide a service to that customer during the entire month. The customer receives the benefit of having available wireless services at all times, 24 hours a day, seven days a week, to make or receive calls at his or her convenience. In addition, emergency 911 service is available even when the customer does not have any airtime available to him or her under the prepaid program. This is unlike the traditional gift certificate where the customer receives no benefit until such time as the gift card is in fact used. Essentially, the prepaid customer is purchasing access to a wireless network, even though they are being billed by the minute.

In providing access, the carriers incur additional costs even when the customer does not have any airtime purchased. When a wireless device is on, but is not being used to hold a conversation, the device is actually continuously communicating back and forth with the net-

work. As such, whether or not the customer makes or receives calls in any given month, the wireless carriers incur costs to run the network, provide 911 service and have IT management costs. These are costs that the carriers will only recover when the airtime is used up by the customer or when the prepaid wireless card expires.

In our opinion, all of these arguments significantly differentiate wireless prepaid cards from the traditional retail gift card. We are concerned that if the term "gift cards" is drafted too broadly, it could easily be interpreted to capture wireless prepaid cards. This would severely impact a wireless service relied upon by millions of Canadians.

In conclusion, Rogers Wireless, Telus Mobility and Bell Mobility assert that wireless prepaid cards are not gift cards. For the customer, wireless prepaid cards are a cost-management mechanism; and for the carriers, wireless prepaid cards are an account and billing management mechanism. We would encourage the government to interpret the legislation and draft regulations in such a way that clarifies that wireless prepaid cards are not the same as traditional retail gift cards.

Thank you for allowing me to make these submissions. I will now turn the microphone over to my colleague Mr. Ian Bacque of Telus to make any additional summary remarks that he may have.

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Mr. Ian Bacque: It's an honour to be here on behalf of the 32,000 Telus team members across the country to speak about Bill 152, including the 5,200 team members who call Ontario home now.

A few words about Telus: It's the country's second-largest telecommunications firm, with revenues in excess of \$8 billion annually. In Ontario, from basically a standing start six years ago, we had 300 employees and no revenue. Telus in Ontario now has over 5,000 team members and it's a \$1.8-billion-per-year business. It's a great growth story, and we've achieved it by investing over \$7.5 billion in the province since that time. We're proud of our growth in Ontario, and we are committed to our province and to the city of Toronto.

You may know that we recently broke ground on an 800,000-square-foot office tower in downtown Toronto, and we're also intensely committed to our customers, which now includes the government of Ontario.

At the bottom of our pay slips is a simple but very true statement, and it's a reminder: "Brought to you by your Telus customers." I simply say this because it's in the spirit of commitment to our customers and doing what's in their best interests that I am here today.

As John said, with traditional retail cards the stored value is from the moment it's purchased, intended to be consumed by someone other than the person who bought it. That's a fundamentally different situation than our products.

One might say that with traditional retail cards, the gift cards, the end user is actually a stranger to the financial transaction that took place. They get a gift, but they were not part of the purchase transaction that took place.

With our cards—long distance, wireless minutes and Internet usage; dial-up in Ontario and high speed in our in-territory, as we say in western Canada and eastern Quebec—the purchaser buys and consumes the Telus service themselves. This again underscores a fundamental difference between the two scenarios.

Frankly, we're just not convinced that there is any compelling reason to include telecommunications cards in the definition of "gift cards." They're simply different situations.

Again, the real issue isn't what you might call a third-party transaction, where the card is gifted and the intent is that it be gifted; with our products, they're purchased and consumed.

Those would be my additional comments. We do indeed support what Rogers has said today.

The Chair: Thank you, Mr. Bacque. We'll start with the government side, about two minutes each. Mr. Kular.

Mr. Kuldip Kular (Bramalea-Gore-Malton-Springdale): Thank you for your presentation. You tried to clarify what a prepaid wireless card is, as well as the difference between a gift card and the prepaid wireless card.

I had the experience a couple of times of visiting outside this country, and there you need Bell Mobility's card to use the telephone because in some of the places you cannot use anything besides the card. My question to you, Mr. Armstrong, is: What percentage of your revenues are from prepaid wireless cards? I think a lot of people waste a lot of money in the prepaid cards, because if you get it for \$10, sometimes you don't use the last \$1—they waste money. The second question is: Do you have any figures to tell me how much people waste on these prepaid wireless cards?

Mr. Armstrong: Thank you for the question. If you don't mind, the reason I brought Howard Slawner with me is so that he could answer the wireless questions.

Mr. Howard Slawner: The revenue portion of prepaid cards—do you mean versus post-paid, where you buy a monthly subscription?

Mr. Kular: Yes.

Mr. Slawner: It would be probably under 10% of the revenues. I can only speak for Rogers, of course, but the majority of our customers are post-paid, and the prepaid is a minority. I'm sorry, the second question?

Mr. Kular: What percentage of revenues would you say you have from that? Ten per cent?

Mr. Slawner: Yes, I would say in that area or under. Most customers are post-paid.

Mr. Kular: Do you have any figures of how much people normally lose by not using those cards? If you have \$10 worth of card and you don't use \$1, that's a wastage of 10%.

Mr. Slawner: Yes, again, what happens is if you don't use your minutes in a particular month, if you activate a new card, you do get—

The Chair: With respect. Thank you, Dr. Kular. We'll go to the opposition side.

Mr. O'Toole: Thank you very much for your presentation on a rather tenuous issue. I'd probably agree that these should be treated differently than the gift card issue that's covered in a bill that has some 56 statutes that we're dealing with. This is sort of stuck in there. I hope you've reviewed it and find that you're asking for it to be exempted from the listed regulations of those specific products. But the questions that have been asked here are fairly appropriate in terms of: they are popular, they are part of your growth plan, convenience and other things. I guess my question is—it may be quite naive—if I were to buy a card for one of my children, is it registered in their phone? Give me the deal on how the cards work.

Mr. Slawner: I don't know who the phone is registered to. If you bought a phone for your child and it was registered in their name and the phone number is associated with them, then yes. What happens if you get a gift card for them—sorry, I should say pre-paid card; even I get confused sometimes—the pre-paid card, you hand it to them, they would enter the PIN number using their telephone number.

Mr. O'Toole: Then they log it in, and when they log in, it's logged to that phone number.

Mr. Slawner: It would be logged to that phone number, exactly.

Mr. O'Toole: But it's open to start with, so, in fact, it is a gift card. Once it's initiated, though, it belongs to that phone, right?

Mr. Slawner: It belongs absolutely to that phone, to that account.

Mr. O'Toole: I understand that.

Now, on the Telus side and the wireless side, what's your view with respect to the use of cellphones while driving?

Mr. Bacque: If I may answer that. I think it's fair to say the real issue is distracted driving, not necessarily the use—it can be a hot cup of coffee, it can be a hamburger or a submarine sandwich, kids crying in the back, or the radio that's on too loud. People really need to pay attention.

Mr. O'Toole: That's generally what I say as well, Ian, but anyway. Another question on a humorous level is the income trusts—

The Chair: Thank you, Mr. O'Toole.

Mr. Bacque: On that particular issue, I'm going to say "no comment."

The Chair: Mr. Kormos?

Mr. Kormos: Gentlemen, look: I'm learning. I don't know anything about how people work cellphones with cards, because it sounds like a little bit of a consumer rip-off, Mr. Kular, because it looks like the person who post-pays is protected in terms of not having remnants left on a card that disappear. But you're saying, the minute the card is activated, the meter starts ticking with the base monthly rate.

Mr. Slawner: No. When the card is activated, in most cases you have between 30 days and 365 days to consume the dollar value on the card. Then you start drawing down upon that card.

Mr. Kormos: Oh, I see. Does that affect the cost of the card, whether it's a 20-day card or a 365-day card?

Mr. Slawner: Well, the bigger the value of the card, the more time you have to consume the minutes, basically.

Mr. Kormos: But do you charge that cardholder a minimum amount off the card each month, regardless of whether or not they're making phone calls? No, you don't.

Mr. Slawner: No.

Mr. Kormos: So you've got an expiration date on the card.

Mr. Slawner: Exactly.

Mr. Kormos: Even if there's 90% of the card left after one year, you've got an expiration date. That's a rip-off.

Mr. Slawner: No, I disagree. There are two reasons: One, because you are able to roll over the minutes each month if you do have unconsumed minutes. Secondly, as we discussed earlier, the phone is actually always being used all month long.

Mr. Kormos: Then why don't you simply say that once you activate the card the base rate is \$4 a month whether you use the phone or not, and let the meter simply tick? What you're saying is if you don't use the card up within the next period of time, you lose it, whether you haven't used the phone at all. What about people who carry cellphones just for emergencies? You don't want people nattering away on their cellphone. The business about third party—come on. If I choose to go out and buy myself—because I'm a lonely guy with very few friends—my own Christmas gift by way of a gift card, that doesn't make it any different than Mr. Dhillon because all of a sudden he has found a liking for me.

The Chair: Thank you, Mr. Kormos, and thank you to you, gentlemen, on your testimony and presentation on behalf of Rogers Communications and Telus.

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ONTARIO COMMUNITY COUNCIL ON IMPAIRED DRIVING

The Chair: I would now invite our next presenters to please come forward: Ms. Shelley Timms, president, and Anne Leonard, executive director, of the Ontario Community Council on Impaired Driving. Ladies, I invite you to be seated. As you've seen in the protocol, you have 15 minutes in which to make your presentation. I invite you to begin now.

Ms. Shelley Timms: Thank you. Mr. Chair and members of committee, my comments address the amendments to the Liquor Licence Act. My name is Shelley Timms and I am president of the Ontario Community Council on Impaired Driving. With me is Anne Leonard, the executive director of OCCID.

OCCID is a group of members and stakeholders whose mission is to reduce and eradicate impaired driving. Our membership consists of police, public health, business, government and community groups.

We would like to address four points: first, mandatory liability insurance, which is not included in the amendments; resources for inspection of licensees; training of licensees; and the issue of bringing drinks into public washrooms. These issues were raised in a letter to Minister Phillips on November 7, 2006, a copy of which is provided to each member of committee.

I can say on behalf of the members of OCCID that for the most part we're disappointed with the amendments proposed for the Liquor Licence Act. The act has not been reviewed since 1989 other than the amendments related to the bring-your-own-wine legislation, which also includes some tightening of enforcement.

One of the ways of assisting the enforcement side, as well as public safety, would be to implement mandatory liability insurance. This was proposed at many of the public consultations and supported not just by OCCID but also by two hospitality organizations. If you tell the average person that there is no mandatory liability insurance for licensees, he or she is shocked, as the concept seems so logical that people assume the government has already put it into place in the Liquor Licence Act.

There is precedent in the form of the Compulsory Automobile Insurance Act for a statutory mandate of insurance. However, far more telling is the fact that a physician must have years of training, then must have insurance before he or she can administer or prescribe drugs. Alcohol is a drug, yet it can be sold by those with minimal training and sometimes minimal social responsibility.

We acknowledge the amendments regarding risk-based licensing, but this is just making the issue far more complex than is necessary. While no one has statistics as to how many establishments are operating without insurance, there was a two-year public consultation and no attempt was made to find out just how many licensees are operating without insurance. We do know that at least a few exist without insurance because of legal cases that exist.

Rather than create increased complexity, if you mandated mandatory liability insurance, there would be consistency and protection for those who might be overserved and, more importantly, for third-party users of our highways.

In 2004, Ontario had the lowest level of alcohol-related automobile deaths, but there were still 192 people who died on our roads as a result of alcohol-related crashes. Multiply that number by 4.5 and we have an additional 900 significantly injured people due to spinal cord, brain injury and burns. The factor is higher for minor injuries and significantly higher for those directly impacted, such as family and friends. There are clearly thousands of people in the province of Ontario who'd be comforted by the fact that one of the most common locations for a drunk driver to get drunk is at his or her local bar.

Secondly, regarding enforcement resources: The provisions we do have in place will be of no effect if the inspections are not carried out on a regular basis.

Anecdotal evidence from licensees in particular bars have some being visited several times a year while others have not seen their inspectors in two or three years. Given that there only 43 inspectors and approximately 18,000 licensees as well as 65,000 special-occasion permits, that's not surprising. While some licensees may not require regular inspection, a minimum of once a year should be required for all so-called "low-risk" establishments. The inspectors also need regular and consistent training in order to ensure that the licensees are treated in the same and fair fashion.

Thirdly, OCCID strongly supports ongoing training for bar managers and owners, and that Smart Serve be mandated and updated on a regular basis. We had understood that it was proposed that Smart Serve would be renewed every five years, but we understand it has also been put on the backburner due to some licensees taking exception to that.

Training in general and Smart Serve in particular, as well as some other programs such as Safer Bars, which is carried out by the Centre for Addiction and Mental Health, are essential for public safety. Too many servers do not understand that the act states they cannot serve a visibly intoxicated person, too many licensees do not understand how to deal with intoxicated patrons, and too many patrons do not understand that bars are not just allowed but are required to stop service due to intoxication.

Lastly, the issue of drinks in washrooms could create more problems than it solves. Licensees should be tracking and monitoring their guests' consumption. That has been made clear in many civil cases, and this will be substantially more difficult. There is the increased risk of underage drinking, as it will be much easier to give a drink by a 19-year-old to an 18-year-old in a washroom. There is the risk of violence with the use of glass in washrooms. There are basic public health concerns, and there is also the question of whether this increases an establishment's capacity, thereby allowing more people in a space.

Responsible establishments have methods in place for monitoring drinks and should be able to determine their own policy on this issue. Further, please keep in mind that most common date rape drugs are not GHB—they're not Rohypnol. The most common date rape drug is alcohol.

We're pleased to see amendments to allow greater examination of applicants for licences, but we ask you to take this further by re-examining amendments to include mandatory liability insurance, better training of applicants, and ensure that adequate resources are given to the inspection side.

Too often, we see a lot of ambivalence towards alcohol in this province, and quite frankly, the ambivalence exists on the government's side as well. Alcohol enjoyed in moderation is a delightful substance—I share in it myself—but it needs to be treated with respect, and it needs to start with the legislation that comes down from this House.

The Chair: Thank you very much. We have considerable time for questions. We shall start with the opposition side, about two and a half minutes. Mr. Tascona.

Mr. Tascona: Thanks for coming here today. I appreciate your presentation. I want to ask you a question on the first point you made with respect to mandatory liability insurance for licensees. It's not part of the bill. What explanation have you received from the government for why they didn't put it in?

Ms. Timms: I could only tell you what I've heard through rumours; I haven't heard anything substantial. I think there is a concern that the licensees in general will be concerned.

In a conversation that Anne and I had on the telephone, on the one side we were told that we can't expect 17,000 licensees to have to get insurance all at one time. I can assure you, it won't be 17,000 licensees. Most licensees are responsible and have insurance.

On the other hand, in the same conversation I was told that only four reported civil cases showed that licensees didn't have insurance. Well, as a former civil litigation lawyer I can tell you that 96% of all cases settle before the courtroom door, so if you took those four and added 96, there are at least 100 licensees. Then there are probably a lot of people who do not pursue action because, if they find out the licensee doesn't have insurance, there is no point.

Mr. Tascona: So I take it that the government's attitude is that there's no harm, no foul; they're not going to even listen to you. Is that what we're hearing?

Ms. Timms: At all of the various consultations we attended and that our various stakeholder members attended, this issue was raised, and it was raised not only by OCCID but by the Campus Hospitality Managers Association, which is an association of pub managers at universities and colleges.

Mr. Tascona: But you've never received an official position from the government as to why they don't believe this is important?

Ms. Timms: No.

Mr. Tascona: Okay. Thank you.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you very much, folks. I appreciate your comments. I am interested in your observations around the—there is so much fanfare around drinks in the washrooms and the date rape phenomenon. At first blush, I thought, "Hmm"; but for the foul nature of most washrooms in taverns, especially those that young people are inclined to go to—and when you talk about the public health issue, I think that's what you are reflecting on. What do you do with the drink when you get there? Do you put it on the floor of the stall? That is just disgusting.

But then, the other observation from young women is that they are most vulnerable in terms of something being put in their drink not when they go to use the toilet facilities, because then they leave their companions at the table—girlfriends, boyfriends, what have you; it's when they go as a group out to the dance floor to dance, when

they leave the whole table. That's when a predator has more meaningful access to their glass, their bottle of beer—whatever.

So that was just an interesting observation, one that, had I not been told about, I probably wouldn't have reflected on, because that's something young people—not that I'm not in taverns, but the table doesn't get up and go onto the dance floor. That's number one.

Number two: I am surprised and shocked. I just never for the life of me thought that there wasn't a requirement for minimum liability coverage on the part of a licensee. Holy moly.

Ms. Timms: And your response is similar—everyone you talk to, most people are surprised.

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Mr. Kormos: It is shocking, because you've got the phenomenon of, let's say, overserving, where there's very clear liability on the part of that server, but it's worth zip to the paraplegic—right?—a person who is crippled as a result of being overserved. That person doesn't have insurance coverage. What's recommended, in your view? You're talking about maximum liability of how much?

Ms. Timms: Most bars who do have insurance usually have CGL, comprehensive general liability policies of \$5 million. Just to put things in perspective, the highest award in Ontario—I believe Saskatchewan has superseded this—but in 2001, it was a drinking and driving case, \$8.7 million, and even with the \$5-million coverage and two \$1-million policies, it was inadequate to cover—

Mr. Kormos: And then hopefully you've got the insurance industry doing some of the policing, because they're going to be in there, if they're smart—the insurance industry isn't that smart. You know my views about that. But they'd be in there policing these taverns and licensees—

The Chair: Thank you, Mr. Kormos. I would now offer it to the government side. Mr. Dhillon?

Mr. Dhillon: Thank you very much for your presentation and your good work. Under this bill, there are proposals for the Alcohol and Gaming Commission to conduct risk-based licensing. Do you not agree that that would help target high-risk offenders?

Ms. Timms: At this point, we haven't been given any information as to what a high-risk establishment would be, and with all due respect, if you wait until someone is charged under the Liquor Licence Act, by then the problems could have occurred. If you are basing it on whether or not they have insurance, that would be helpful, and if they don't have insurance, and that's a good criteria for judging them as a high-risk licensee, that would be great. However, with all due respect, it just creates another level of bureaucracy.

You can simplify it by simply putting a section in the Liquor Licence Act that says, "All licensees must have a certain level of liability insurance." It just complicates it. It adds another layer of determination by an already overstressed Alcohol and Gaming Commission to make those decisions.

Ms. Anne Leonard: One of the bonuses for having mandatory liquor licence liability insurance—it's not just about them having insurance for an incident after the fact, but it builds a whole structure for good policy. If they know they're going to be sued or they could be sued, if they have to have insurance, they'll do things to try to reduce their risk so that they can get the best possible deal on that insurance. So they'll train their staff better, they'll walk the walk. They'll understand and explain to their staff what an intoxicated patron looks like and all of that. To just go out and get your liquor licence more easily and not have some of those requirements there undermines the importance of what they're doing.

Mr. Dhillon: Do we have time for another question?

The Chair: Very briefly.

Mr. Kular: Most of my question is answered. I'm a family doctor and a politician. As you know, drunk drivers cause a lot of mortality, morbidity for our province. It was about the mandatory insurance. Being a physician, I know what it means. I think it would be nice to be included, but still it should depend upon—

The Chair: Mr. Kular, I'll have to intervene at this point. Ladies, thank you very much, Ms. Timms and Ms. Leonard, for your presentation on behalf of the Ontario Community Council on Impaired Driving. Thank you.

FEDERATION OF ONTARIO MEMORIAL SOCIETIES— FUNERAL CONSUMERS ALLIANCE

The Chair: I now move directly to our next presenters, and they are Ms. Pearl Davie, president and chair, and Mr. Al Gruno, vice-president, of the Federation of Ontario Memorial Societies–Funeral Consumers Alliance. Please be seated. As you've seen, you have 15 minutes in which to make your presentation, and I would invite you to please begin.

Ms. Pearl Davie: Thank you. This is with respect to amendments to the bereavement-related statutes.

The Federation of Ontario Memorial Societies–Funeral Consumers Alliance—we use the acronym FOOMS–FCA—is an umbrella organization of memorial societies in Ontario, which was established in 1984 to work with governmental and non-governmental organizations with respect to consumer protection in the death care sector.

In case anyone doesn't know, memorial societies are non-profit, volunteer-run organizations advocating the pre-planning of simple funeral arrangements and access to alternatives. They are made aware, through their members, of difficulties encountered with the funeral industry and therefore approach the matter of legislation from a position of first-hand knowledge which no other organizations offer.

Representatives of the FOOMS–FCA legislation committee have been involved with legislation and regulation as consumer advocate during the formulation of the Funeral Directors and Establishments Act, 1990, the Cemeteries Act (Revised) and the Funerals, Burials and Cremation Services Act, 2002. Our concerns have always

been that any legislation related to the death care industry should contain strong consumer protection and not restrict choices of the consumer as to the type of disposition arrangement desired. All member of FOOMS are unpaid volunteers who donate their time and knowledge to this cause.

We are presently concerned with amendments to the Funerals, Burials and Cremation Services Act, 2002, and regulation, as outlined in Bill 152, bereavement sector, before the standing committee today. The government of Ontario has used many resources, including time, expertise, and tax dollars, over several years to enhance consumer protection in the legislation and regulation in this area. The process has been fair and open.

Legislation committee representatives participated in the bereavement sector advisory committee meetings and have appreciated the attention paid by the government to ensure that the consensus and standards set by the committee are met.

We have consistently advocated for a strong code of ethics for the industry as a whole and anticipate that the amendments to the act and regulation will enforce an ethical approach to consumers at this emotional time in their lives.

We are particularly concerned that where commercial enterprises are located on tax-exempt cemetery land, the appropriate realty and business taxes be assessed and paid to the local municipality and not absorbed into the care and maintenance funds of the cemetery. This would help ensure a more level playing field with other commercial enterprises that are not located on cemetery land. There may be not-for-profit cemeteries which have not-for-profit funeral establishments located on their property, and taxation in this case would be directed to the care and maintenance fund.

An example of the need for amending and updating the legislative and regulatory framework would be found in the case of so-called "visitation centres." These centres are, in effect, pseudo-funeral establishments where some activities normally carried out in a funeral establishment take place. These visitation centres presently lie outside the current legislation, are not licensed and pay no tax, but will be licensed and subject to taxation in the new legislation. They are part of a business. It is in the interest of Ontario consumers that all death care sector activities take place under the protection of the Funerals, Burials and Cremation Services Act, 2002, and the relevant sections of other acts, such as Bill 152.

FOOMS-FCA finds that although not perfect from our perspective, the act and proposed regulation achieves a good balance between protecting consumers at a time of vulnerability and allowing the industry a generous scope within which to conduct its business. The updated legislation allows for the orderly introduction of new technologies and changes in consumer's wishes such as greener or more environmentally aware dispositions. Oversights and imbalances from the existing regime are also corrected to a large degree. Again, imperfect, but that's humanity.

We therefore support the passage of Bill 152 and the proclamation of Bill 209 in a timely fashion. We've had numerous discussions over the past several years with consumer representatives and memorial society leadership in other provinces. These people look upon the Ontario legislation and proposed regulation as a tremendous achievement and a real advancement in this sector for both consumers and service providers.

I haven't taken up much of our time because we always try to be brief and to the point. I would certainly entertain any questions.

The Chair: Thank you, Ms. Davie. Yes, a generous amount of time, beginning with Mr. Kormos. About three minutes-plus.

Mr. Kormos: Thank you, folks, very much. Obviously this has caused some—now the Bill 209 you're talking about, is this the Consumer Protection Act?

Ms. Davie: No, this is the Funerals, Burials and Cremation Services Act.

Mr. Kormos: That's the Hudak bill from back in the last government.

Interjection: That's right.

Mr. Kormos: So three years later, it has still not been proclaimed.

Ms. Davie: No. It received third reading on December 13, 2002.

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Mr. Kormos: Wow. This is starting to make it a little more—what's going on? I talked to the minister, and the minister was very generous in his time with me. In his letter, he's got reference of this matter to Judge Adams, who mediated, brought everybody together—

Ms. Davie: Yes, the bereavement services advisory committee. It was a round table process. It was very, very useful. The intent was to achieve some kind of consensus within the different segments of the industry and to bring them all into sort of an agreement. The agreement was that consumer protection was, first and foremost, the most vital part of the process. With the current legislation, one is for funeral directors and establishments and one is for the cemeteries. The new legislation, Bill 209, will bring in all the aspects of the death care industry: monument builders, casket dealers, crematoria—

Mr. Albert Gruno: Cemeteries and the funeral establishments themselves.

Ms. Davie: —and the funeral establishments and transfer services. It's an umbrella type of legislation. Under it, for example, commission salespeople will be licensed.

Mr. Kormos: That's why I was surprised when the small mom-and-pop funeral homes expressed concern about this legislation, because I thought the matter had been resolved. What's happened? Do you know?

Mr. Gruno: Basically, from the BSAC, almost everything was resolved except some issues of taxation. Most cemetery land is exempt from taxation, so we can have a funeral establishment, a transfer service, we could have a crematorium located there, we could have a funeral home located on the cemetery land. So if it's not taxable land,

how is it dealt with? This is a tremendous business advantage to those who do not have cemeteries that they own to locate themselves upon.

The current thinking from the ministry, that we support, is that that portion of the cemetery land that's used for commercial purposes is taxed at the commercial rate—it's a commercial operation—and that tax is then due and payable to the municipality in which the land sits. This is only fair, the same as any other business. The other funeral establishments that don't sit on cemetery land are taxed and pay taxes to the municipality that they reside in. So we looked for a level playing field. It was one of the keys of the BSAC, and Bill 209 very much reflects and adheres closely to this consensus that was achieved.

The Chair: Thank you, Mr. Kormos. With respect, to the government.

Mr. Khalil Ramal (London-Fanshawe): Thank you for your presentation. We listened to a similar presentation yesterday. To my knowledge, I think some cemeteries are being used by religious institutions for their ceremonies and special issues. They're the only ones exempted from taxes. Do you agree with this?

Mr. Gruno: They would remain exempt from taxation.

Ms. Davie: They would remain exempt, yes: religious, municipal and not-for-profit.

Mr. Ramal: How would your proposal benefit your members?

Ms. Davie: Do you mean memorial society members?

Mr. Ramal: Yes.

Ms. Davie: The idea is freedom of choice. We would like to think that the funeral directors, the business as a whole, would treat people fairly and would give good prices for minimal service, which is what memorial society people require. Therefore, the level playing field means that the free-standing funeral home operator is in the same position as a funeral home operator on cemetery land, if the taxation is assessed and enforced. It benefits our members in that it creates the level playing field.

Mr. Ramal: Thank you.

The Chair: Thank you, Mr. Ramal. If there are no further questions, to Mr. O'Toole.

Mr. O'Toole: This part of the bill, this particular schedule, was sort of stuck in here at the last moment and hasn't received as much attention, perhaps, as it may have deserved. In fairness, I want to compliment you for an honest presentation. You're recognizing the work that's gone on in this area.

Ms. Davie: It has been tremendous. It's been policy people and everybody involved. It's just been tremendous.

Mr. O'Toole: I had a vague familiarity from my time in government with Bill 209 and the Adams report and a couple attempts at getting this thing right. I'm also looking at a memo issued by the minister today, because there have been meetings with House leaders to try to find consensus.

I have several calls to make today to people who have contacted me, because I guess I'm the only remaining member, to find if that consensus still exists. Are you familiar with Mr. Phillips's letter of today?

Ms. Davie: Just today, no.

Mr. O'Toole: Well, this one here says that any new activities would basically be treated as commercial. He added on the cemetery activities, and that's the future in the business, the crematoriums and other things, because that's a growing practice. The difference here is that they would be making payments in lieu of taxes, which is what municipal buildings pay today. But what is the rate? As long as it's a level playing field, I have no problem; if it's fair, and there's a responsibility under the act to make sure there are perpetuity funds. Are you satisfied that this bill, together with Bill 209, will achieve the fairness principle as well as the perpetual care—

Mr. Gruno: Yes, we're very much in favour of the bill as it stands now. As we say, it's not perfect from a consumer's point of view, it's not perfect from the industry's point of view, but given the conflicting concerns that both consumers and the industry would have over this issue, I think it's about the best we're ever going to get. It's ready to go, except for this one taxation issue, as near as I can see. It was a very long process. There has been a tremendous amount of consultation—

Mr. O'Toole: That's the big issue, though. People are going to be demanding more efficient delivery models, you know, what they call alternative funeral services. That's the future. They're going to be looking for—and we've got to protect the consumer. That being said, it's almost like tied selling on the other hand. Do you know what I mean? Once you get in there and you're a member of a church or a community—bingo—you've got the whole thing. You've got the flowers, you've got the monument, all the stuff that goes with it, and it's tied selling, something that I don't think should be treated as lightly as it has been. That being said, I wouldn't profess that I know what you've brought to the table here today.

Ms. Davie: As we see it, the ability to pay taxes—assessments, shall we say—into your care and maintenance model, for a commercial enterprise it is definitely a commercial advantage, because while they don't get to keep the money to spend, they have to put it into the care and maintenance fund, nevertheless that enhances their care and maintenance fund. They draw the interest off that, and they use the interest to improve the cemetery. Presumably, if you're a not-for-profit—

The Chair: With respect, thank you, Mr. O'Toole, and thank you, Ms. Davie and Mr. Gruno, for your presentation on behalf of the Federation of Ontario Memorial Societies.

CANADIAN BANKERS ASSOCIATION

The Chair: I would now invite our next presenters, Ms. Hubberstey and Ms. Stephens of the Canadian Bankers Association. As you may have seen, the protocol is that you'll have 15 minutes in which to make your

presentation. Any time remaining will be distributed evenly amongst the parties for questions and comments. I would invite you to begin now.

Ms. Caroline Hubberstey: Thank you, Mr. Chair. Good afternoon. I'm Caroline Hubberstey, director of public and community affairs with the Canadian Bankers Association. I am joined today by my colleague Sandy Stephens, legal counsel.

Thank you, Mr. Chair and members of the committee, for the opportunity to provide the banking industry's views on Bill 152. I want first to express our appreciation to the government for conducting consultations involving a broad range of stakeholders on these issues.

Bill 152, as you well know, covers a broad range of issues. Our comments, however, focus on three areas: title fraud, fraud alerts and the Personal Property Security Act.

I will start with title fraud. This fraud exists under a larger umbrella of real estate fraud. For example, with respect to the types of real estate fraud banks encounter, the vast majority are value flips, where there is an organized effort to defraud the lender; and fraud for shelter, where an applicant will, for example, inflate their income to obtain a larger mortgage.

Any given real estate transaction can involve a number of stakeholders: buyers, sellers, lenders, real estate agents, title insurers, mortgage insurers, lawyers, land registries, mortgage brokers etc. I want to state that the banking industry takes the matter of real estate fraud very seriously and is working with other stakeholders to combat it. Our industry works with police and other groups to share information and get a better understanding of how this type of fraud is committed and see what steps can be taken, individually and collectively, to prevent real estate fraud from happening.

We support the measures in Bill 152 as a positive step to help combat real estate fraud and protect innocent consumers, and we will continue to work on clarifying some technical matters. With respect to the bill, for example, we support the view of other witnesses who have stated that in those cases where there is no innocent owner claiming that the mortgagee's mortgage is invalid because it was fraudulent, there should be an assumption that the mortgage is valid so that the mortgagee can enforce the mortgage and sell the property under power of sale. As well, we are working with the government on the additional initiatives it is considering to further secure access to the land title registry.

We want to express our appreciation to the minister and the ministry staff for involving stakeholders in consultation and being receptive to stakeholder comments. Without a doubt, this co-operative effort is of great value in the fight against real estate fraud.

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Bill 152 also amends the Consumer Reporting Act to provide for alerts to be placed on consumers' credit report files. This measure is aimed at helping stop identity thieves from using an individual's personal information to commit fraud.

The banking industry supports these amendments and believes that the fraud alert system will benefit consumers. As our industry is already subject to substantive legislative requirements, we are pleased that the bill provides sufficient flexibility to enable us to adapt our processes. We hope to have a similar opportunity—as the recent consultation process—to contribute to the development of the regulations in order to help ensure that the system is easy for consumers to use, and effective and efficient for creditors. In the end, we look forward to working with the government, the consumer reporting agencies and other stakeholders to build a strong fraud alert system in the province.

The fraud alert initiative is a positive measure in the fight against fraud and identity theft. I want to take this opportunity, however, to also talk about some other steps that need to be taken and how the Ontario government can help make them happen.

For the most part, stories about identity theft are stories about fraud, fraud that has likely resulted from an identity theft incident. Some may say it is semantics, but we make the distinction for a reason. It is because identity theft, which is the unauthorized collection and use of personal information, is not a defined statutory offence in Canada. In short, it is not a crime. The misappropriation of personal information inevitably leads to a broad range of criminal activity: financial crimes, forgery and impersonation; abuse of government financial programs and identification documents, such as health card fraud; and to the funding of organized crime.

So why wait for the fraud to happen, and all the ensuing harm to consumers, businesses and government, before the criminals are stopped? The answer lies in this question: At what point in the continuum of criminal activity should criminal law be applied to an issue? We think that early intervention is needed.

This serious gap in federal criminal law is a consumer protection matter that must be addressed. In addition to making identity theft a defined offence, we are also calling for changes to make it illegal to possess multiple pieces of identification for a number of individuals and to traffic stolen personal information.

We strongly encourage the Ontario government, along with its provincial colleagues, to continue to press the federal government to make these needed changes.

In addition, we believe that efforts should be targeted at significantly improving the quality, integrity, consistency, security and reliability of identification documents issued provincially and federally. These are the foundation, or root documents, for identity theft and identity creation.

The integrity and security of documents is inconsistent, and there are few reliable ways to authenticate identification. For example, if you look at provincial drivers' licences, they range from one extreme to the other. Alberta has one of the most secure in North America. It incorporates such features as laser engraving, anti-copy ink colours, raised text, a high-definition photo with soft edges, fluorescent ink and more. New Brunswick,

however, just moved to mandatory photo drivers' licences in January 2005. Other provinces, including Ontario, have different standards as well.

Financial institutions and other credit and service providers need to verify customer identity. How well this is done depends largely on the integrity of the identifying documents received. It also depends on the extent to which the institution or business can verify the authenticity of the documents. To aid this process, we also think that systems could be adopted that would allow for the use of federal and provincial data banks for the purpose of validating identification documents. In this regard, we can learn a lot from other countries. Australia, for example, is prototyping a document verification service. No personal information is transmitted; it's just simply yes, it is valid, or no, it is suspect.

I want to reiterate that the banking industry supports the fraud alert measures in Bill 152, but we also encourage the government to take steps to improve the integrity of provincial identification and to press the federal government to modernize the Criminal Code.

The banking industry commends the government for its commitment to modernizing Ontario's business laws and for recognizing the importance of ensuring that Ontario's business laws are up to date and consistent with other jurisdictions. The Personal Property Security Act is extremely important commercial legislation which facilitates the provision of credit and economic growth in our province. We support the majority of the amendments to the PPSA introduced in this bill; however, there are a number of areas of concern which we would like to outline.

The check-the-box system for classifying collateral in the PPSA: The bill amends the PPSA by removing the check-box system for classifying collateral and replacing it with a system that requires the secured party to provide a narrative description that describes the collateral by item or type.

The current system is simple and effective, and there does not appear to be any pressing reason for change. Given the transitional issues that would arise and the costs of systems changes, it does not seem worthwhile to change a process that already works effectively.

Errors in security agreements: The bill has repealed subsection 9(2) of the PPSA, which provides that a security agreement is enforceable against a third party despite a defect, irregularity, omission or error unless the third party is actually misled. We do not believe that a defect, irregularity, omission or error in a security agreement should affect its enforceability against a third party who has not been misled. We believe that subsection 9(2) should be retained.

Incomplete collateral descriptions in security agreements: Subsection 9(3) of the PPSA, which provides that the failure to describe some of the collateral in a security agreement does not affect the effectiveness of the security agreement with respect to the collateral that is described, has been repealed in this bill. It has been questioned whether this subsection should be deleted on

the basis that subsection 9(3) is redundant in light of the court's powers to preserve a security agreement with respect to collateral properly described by severing collateral that is insufficiently described. The banking industry believes that subsection 9(3) provides certainty on this issue and that deleting this section would not improve the PPSA. It is imperative that the PPSA be relied upon for clarity whenever possible, as opposed to court actions, which are timely and costly.

"Sales in the ordinary course of business" priority rule: Section 28 of the PPSA provides that a buyer of goods from a seller who sells the goods in the ordinary course of business takes them freely from any security interest given by the seller, even a perfected security interest of which the buyer was aware, unless the buyer knew that the sale constituted a breach of the security agreement. This provision is amended, in part, to add that the buyer is protected regardless of whether the buyer took possession of the goods. Similar amendments are made to clarify and enhance the protection given to lessees of goods from a lessor who leases the goods in the ordinary course of business.

We agree with these changes generally, subject to the caveat that a secured party who has perfected its security interest by possession of the goods at the time of sale to the buyer should prevail over the buyer regardless of the buyer's good-faith purchase in the ordinary course of the seller's business. This is consistent with the Ontario Bar Association's 1998 submission. If a lender has possession, it may well be at the time of default, and it would not be appropriate that a buyer would prevail over a lender at that time.

Section 62 of the PPSA is amended to exempt collateral goods that would be exempt under the Execution Act from seizure by a secured party upon the debtor's default, except in the case of a purchase-money security interest in specific goods or a possessory security interest. We believe that this is too broad an exemption, and that the exemption from seizure should apply only to apparel and basic household goods. Otherwise, credit availability could be affected.

Larger assets, such as automobiles, motorized homes, recreational vehicles, boats etc. are commonly pledged for routine loans, as these items are generally the best collateral, after a house, that a debtor can provide. If lenders were unable to count on the security taken by a loan, they would be reluctant to lend in such circumstances or be obliged to charge a higher rate of interest to compensate for the increased risk. This would not be in the consumer's interest, and therefore such an amendment should not extend to larger assets. Luxury items such as hot tubs, media and entertainment systems, pool tables, satellite dishes, paintings and other non-essential household goods should also not be considered exempt.

We also would be opposed to an exemption on personal property used by a debtor in their business, including farming. Such large asset items may be the only items that can be pledged for a loan, and to render them unenforceable would be problematic for direct lending to

individuals who derive their livelihoods from such activities.

Finally, the bill amends subsection 40(1) of the PPSA to clarify that a person obligated on an account or on chattel paper who has not made an enforceable agreement not to assert defences may set up against the assignee of the debt, by way of defence but not by way of counterclaim:

(1) Any defence that would be available to the debtor against the assignor arising out of the terms of their contract or a related contract, including equitable set-off and misrepresentation; and

(2) The right to set off any debt owing by the assignor to the debtor that was payable before the debtor received notice of the assignment.

While we generally agree with this provision and it is an improvement from the current wording, the banking industry believes that subsection 40(1) should be revised to reiterate the common law position that an assignee is not subject to defences arising outside the assigned contract and related matters other than those which qualify for legal set-off.

I've covered a lot very quickly, but thank you very much for your time. We'd be pleased to answer any questions.

1700

The Vice-Chair (Mr. Khalil Ramal): Thank you very much for your presentation. We have three minutes left. We can divide it equally among the three parties. We'll start with the government side first.

Mr. Dhillon: Thank you very much for your presentation. How big of a problem is real estate fraud?

Ms. Hubberstey: In looking at real estate fraud, as I noted in my comments, it is a larger umbrella, so there are different pieces under it. When you are looking at quantifying the extent of real estate fraud in its broadest sense, it's an equation: It's A plus B plus C plus D plus E. Lenders would be A. When you're looking at the bank industry in the province, or in Canada nationally, banks represent about 60% of the outstanding mortgages, so we'd even be just part of a lender number. When you're looking at it from the banking industry's perspective—we're not taking into consideration other lenders, title insurers, mortgage insurers or others, and you need those to get a comprehensive figure—if I look nationally and, as a proxy, at loan losses on the mortgage portfolio, we see that the banks hold about—

The Vice-Chair: Thank you very much. Mr. Tascona.

Mr. Tascona: Thanks very much for your presentation. Dealing with mortgage fraud, I think you're aware that last week, or before that, Justice Echlin rendered a decision with respect to mortgage fraud. I think he commented on the banks' practices in terms of their knowledge of what was going on and why he didn't allow the registered fraudulent mortgage to stand. Any comments on that decision?

Ms. Hubberstey: I can't speak to the individual case in question, but I will say that the banks engage in significant due diligence processes as they go through the

application on a mortgage. I would love to get into technical detail on what they do, but when I put it in a public forum like this, criminals also read Hansard, and we don't want to put a lot of this information in the public domain because we know from investigative media stories that once that happens, anecdotally, certain frauds go up because it becomes a how-to. But there is significant due diligence that the banks do to be able to ensure that the mortgage is legitimate.

The Vice-Chair: Thank you very much. Mr. Bisson.

Mr. Gilles Bisson (Timmins-James Bay): You only had a minute and you were almost at the point of an answer to Mr. Dhillon's question, which is, how much mortgage fraud would you see within the banking industry?

Ms. Hubberstey: The banking industry as a proxy: We have \$430 billion on a mortgage book. If you look at the loan loss provisions in the mortgage portfolio, it's about \$33 million nationally; 45% of the book is held in Ontario, which is about \$15 million on loan losses totally, of which a fraction of that would be losses attributed to fraud. As noted in my speaking notes, the majority of the fraud we see—

Mr. Bisson: So \$33 million in defaulted loans or \$33 million—

Ms. Hubberstey: Defaulted loans, and fraud would be a portion of that.

The Vice-Chair: Thank you very much for your presentation. Your time has expired.

BARRIE ASSOCIATION OF REALTORS

The Vice-Chair: Now we have with us the Barrie Association of Realtors. Welcome, sir. I know you know the procedure. You have 15 minutes.

Mr. Henry Spiteri: I'm kind of new to this procedure, but thank you for letting me speak.

My name is Henry Spiteri. I'm the political chair of the Barrie Association of Realtors. On behalf of the association, I would like to thank the Minister of Government Services, Gerry Phillips, for his initiative to help address title fraud in Bill 152. I would also like to thank Joe Tascona, MPP for Barrie-Simcoe-Bradford, for his initiative to help us stop title fraud in his private member's bill, Bill 136.

Title fraud is one of the most serious crimes that the people of Ontario face today. It undermines the very security of the land titles system and therefore the security that the people of Ontario have based their lives working for. For most people in Ontario, owning a home is the largest single investment they will ever make, a crucial base for their retirement planning and social and physical well-being. Title fraud will affect some people at a vulnerable stage of their life when they are looking forward to retirement and a quieter life.

The structure of the current registry system has been compromised and the resulting fallout is biased and unfair. We need immediate decisive action to stop further innocent people from having their property swindled

from them and having huge mortgages fraudulently registered against their properties.

We believe that the government should consider the following recommendations:

- that the innocent property owner victims of fraud be provided with a method to have illegal registration overturned immediately, failing which, due to time lags—if they're out of the country and unaware of what's going on—given immediate access to the land titles assurance fund as the fund of first resort;

- that the innocent buyer not be given the right to seek damages from the original innocent property owner; however, that they be allowed to seek immediate compensation from the land titles assurance fund, which should be, again, the fund of first resort;

- that the mortgage illegally registered against the property be unregistered and that the financial institution not be given the right to seek damages from the original innocent property owner;

- notifications of title transfer being sent to the registered title holder of any property owner prior to the transaction taking place;

- the establishment of a secure system of identification numbers to identify the registered owners and registered mortgages;

- discourage drive-by appraisals of properties;

- require certain transactions to take place in person;

- that all cases concerning title fraud are handled as expeditiously as possible with a minimum of expense to the innocent parties and that the right of the original property owners be of paramount importance;

- that the new changes and remedies be available to past victims of title fraud.

Thank you for your time. If you have any questions, I'll be happy to answer them.

The Vice-Chair: Thank you very much for your presentation. I guess we have a lot of time for questions, so we'll start with Mr. Tascona.

Mr. Tascona: Thanks very much, Henry, for attending here today. Your input is very helpful. Have you spoken to the Ontario Real Estate Association about what their feeling is on this? I think they're meeting tomorrow.

Mr. Spiteri: Yes. Actually, our meetings are starting today, and I have discussed this somewhat. Some of the points of view that I put forward were recommendations that they had expressed, but at this point I'm speaking on behalf of the Barrie real estate association.

Mr. Tascona: Okay. There is some suggestion from the government that they're going to—this is from Minister Phillips's letter, which I received yesterday, dated November 22, on controlling access to registered documents. He says, "Currently, we are proposing restricting the right to register a transfer of title to lawyers, while allowing other documents to be registered by those who meet the additional criteria," which would be standards relating to identity, financial solvency and appropriate qualifications. So it would appear that the government is going to work toward just dealing with lawyers, though they say they'll continue to work with the law society

and other real estate professionals to further define the criteria. They're looking at restricting access, but it may be primarily focusing on giving lawyers the right to register. What do you think of that?

Mr. Spiteri: At this point, I don't know whether I really want to comment on that. As far as lawyers are concerned, they're an integral part of this process. Realtors, to some degree, are as well. At this point, I don't feel qualified to answer that question.

Mr. Tascona: Okay. In terms of power of attorney, do you come across dealing with power of attorney on transactions?

Mr. Spiteri: We do come across them very, very rarely. When we do come across them, we usually contact the lawyer who is representing the person to verify that there is indeed a power of attorney and that it's legal.

Mr. Tascona: What do you require, though? Do you require more than just a copy of one? What do you look for?

Mr. Spiteri: We get the copy of one and then again we do call the lawyer who is representing the client, representing the person who holds the power of attorney, to confirm if that power of attorney is in fact a legal power of attorney allowing them to deal in that transaction.

The Chair: Thank you, Mr. Tascona.

Mr. Tascona: Maybe John has a question. Do we still have time?

The Vice-Chair: We divided it equally, four minutes each.

Interjection.

The Vice-Chair: Yes, but equal time for each party. Mr. Bisson?

Mr. Bisson: That's fine.

The Vice-Chair: Do you want to give your question to—

Mr. Bisson: No.

The Vice-Chair: No? Okay.

Mr. Dhillon: Thank you very much for your presentation and for coming here all the way from Barrie. From a realtor's perspective, how big a problem is real estate fraud?

Mr. Spiteri: I last read in the Star it's about 32 separate cases—this is what I just read recently in the Star—that have been reported with title fraud. I'm not in a position to confirm that, but I know in our own city there is one case that has definitely gone forth. So I am fully familiar with that particular case.

Mr. Dhillon: Thank you.

The Vice-Chair: There are no more questions? Okay, thank you very much for your presentation.

1710

ONTARIO ASSOCIATION OF CEMETERY AND FUNERAL PROFESSIONALS

The Vice-Chair: The Ontario Association of Cemetery and Funeral Professionals is here with us. You are the legislative chair, Glen Timney?

Mr. Glen Timney: Right.

The Vice-Chair: You can start anytime you're ready, sir. I believe you know the procedure. You have 15 minutes.

Mr. Timney: Yes, I do. My name is Glen Timney. I've been working in the cemetery industry for 35 years, so I've got a lot of history behind me. I was involved in the legislation when it was passed in 1993, the current Cemeteries Act and the Funeral Directors and Establishments Act. I have been chair of the OACFP—if I may use that short form—legislation committee for the province for the past 10 years, negotiating the new legislation, the bereavement sector in Bill 152, that's before you.

I'll just give you a brief history of the association. It's a non-profit educational association that was established in 1913. Its membership services over 85% of all the burials and cremations that take place in this province on an annual basis, so it's coverage is extensive. Members originally represented just cemeteries. Our cemeteries are religious, municipal, not-for-profit and commercial in nature, so they're the entire breadth of cemetery ownership.

In 1930, as cremation expanded, the association changed to envelop and invite crematorium operators into the industry. In 2002, we expanded and changed our name and changed the mandate to include the entire breadth of the bereavement industry. Now funeral directors, transfer services and marker retailers are also members of the association, so we represent now all segments of the association.

I just want to speak to you on Bill 152. At the start, I want to say that I'm disappointed that some of my industry colleagues have made presentations to the standing committee expressing concerns about portions of the bill that are before you.

The Funeral, Burial and Cremation Services Act has been over 10 years in negotiation and in the making. A select group of industry representatives negotiated changes with the Cemeteries Act and the Funeral Directors and Establishments Act within the framework of the red tape secretariat about five or six years ago. Following a change in government, we then established a bereavement services advisory committee, which was established to reach consensus pertaining to legislative change.

Consensus was achieved within the bereavement services advisory committee amongst all segments of the industry participants after almost two years of negotiations. Those industry participants included funeral directors, cemetery and transfer service operators, marker retailers, casket retailers, consumer and industry association members.

The government policy advisory staff have been using the BSAC recommendations as the basis for proceeding with both Bill 209—regulatory development through clusters—and now into Bill 152. The regulatory development, which is not before you, was divided into seven thematic clusters. We have completed five of those regulatory clusters. As we worked through those clusters, we realized that there were some omissions in Bill 209

that needed to be changed, so what you see before you today in Bill 152 are the changes that needed to be incorporated as the development of the regulations took place.

My disappointment stems from the fact that the very individuals who participated in the negotiation process culminating in Bill 152 are the same individuals who stood before you yesterday and asked for extensive changes to the bill, making misleading, partial and erroneous statements.

When consensus is reached and agreed upon, an individual or association should stand behind that decision. I personally believe it is irresponsible to achieve consensus on one hand and then walk out of the room and continually lobby an attempt to undermine decisions that were thoroughly researched and openly discussed.

There are certain segments of the bereavement industry who have had and will incessantly lobby in order to derail legislation, in order to hide behind existing legislation, to protect their own self-interests, not the interests of Ontario's consumers.

The standing committee needs to be careful that the vocal minority does not negatively impact on and undo almost 10 years of hard work throughout the industry. No legislation is perfect. Each segment of the bereavement industry has had to give and take throughout the process.

The bottom line for Bill 152 is:

—Will the new legislation serve consumers well? The answer is yes.

—Will consumers be afforded increased protection? The answer is yes.

—Will all segments of the industry be covered under this legislation? The answer is yes, and that is a large consumer protection, because in the past, only cemeterians, crematorium operators and funeral directors were legislated. Marker retailers and casket retailers were not legislated. If someone sold a monument or a casket pre-need, they could put the money in their pocket and walk away, and when the consumer came to claim it, nobody was there. So there was no protection for the consumer. All segments of the industry will now be under consumer protection and licensed and regulated.

—Has a level playing field been established to ensure all segments of the bereavement industry can compete fairly? Yes.

I could stand before you and give you all kinds of reasons why Bill 152 will be negative and we should not pass it. Are we 100% happy as an association? No. As I said before, everybody needs give and take. But there are things that we need to understand and things that we need to move forward with.

I understand previous presenters were concerned about educational requirements for licensing. Government staff have this well in hand and the minister has assured the funeral directors that the educational requirements that they currently have at Humber College will be respected. Educational requirements will be defined within the regulations. An industry committee has been established to discuss and negotiate educational requirements for li-

censing. The first meeting actually takes place this Thursday, and I believe the educational requirements can be successfully negotiated and defined by the steering committee and then adopted within the regulatory framework.

I want to focus on one issue. Concern was expressed regarding the ability of a cemetery to make payment in lieu of property taxes to their care and maintenance fund. The presenters either misrepresented the intention of subsection 54(1) of the bill or still, unfortunately, do not fully understand how the cemetery's care and maintenance fund works.

The intent of this legislation was to assist cemeteries throughout the province to improve upon the deficit positions they currently find themselves in within their care and maintenance funds. Over 96% of all cemeteries have insufficient care and maintenance funds to maintain their properties today. Insolvent cemeteries must be taken over and maintained by the local municipality in which they are located, without compensation. This has been carefully researched by the cemetery industry. It has been discussed at length, and the position of payment in lieu of property taxes is supported by both the Association of Municipalities of Ontario and the Association of Municipal Clerks and Treasurers of Ontario. Those two associations clearly see this position as it stands in the legislation as a win-win position. It recognizes that cemeteries have a unique perpetual obligation to maintain. No other sector of our industry has that.

AMO and AMCTO are the municipal bodies responsible for taxation, and they do not wish to assume administrative responsibility for this. I was present at a meeting when AMO, AMCTO and the Ministry of Finance were discussing this with the policy branch, and it was rejected that property taxes would be paid. They said the administrative burden versus the amount of property taxes that would be collected would be overwhelming. They prefer that the care and maintenance contribution would be a safeguard to cemeteries which would reduce the insolvency of cemeteries. If a cemetery becomes insolvent, the municipality is forced to assume responsibility. It is the unsuspecting taxpayer who lives in that municipality who must carry the burden through increased property taxes.

A level playing field is created for industry participants, and I want to explain that. I'll use an example. If, for instance, you had to pay property tax in Toronto, it might be \$100,000. We're talking maybe, at maximum, if this legislation changes, 20 or 30 of these units that would pay property tax within the province. That \$100,000 goes directly into a care and maintenance trust fund on an annual basis, instead of going to the municipality to pay taxes into their general coffers. The cemetery at no time can access any capital from that care and maintenance trust fund, so the belief that capital could be used by the cemetery as a building fund to build chapels, to build mausoleums, columbariums, funeral homes, visitation centres, whatever you wish to call it, is false and wrong. A cemetery cannot access capital within

its care and maintenance fund. There is one exception. If you are a small cemetery, you do not have general funds, you're almost full and you wish to acquire an additional half-acre or acre of land immediately adjacent to your property so you can continue to sell interment rights, you can borrow from that fund, but you must repay it. That is the only exception in access to the care and maintenance funds.

1720

If you look at the care and maintenance funds—you don't have access to the capital. All you have access to is the investment income. That would generate \$5,000 a year if I got a 5% return on that \$100,000, and that \$5,000 is restricted under the act and it can only be used to maintain roads, sod graves, regrade graves, fix fences, pay for security, fix sewer systems and maintain the property. It can never be used for a business venture by a cemetery. So the level playing field is accomplished with a contribution in lieu of payment to the care and maintenance trust fund because \$100,000 is taken out of the general fund of the cemetery as it would if you're paying taxes and it's put into the care and maintenance fund where all it can do is benefit the community by making sure there are funds to maintain the cemetery. It is a level playing field because the same amount of capital comes out of the pocket.

Negotiations have been lengthy and detailed and they've been well-thought-out. There's a definite need to move forward with this legislation in its current form and bring closure to negotiations. Delays will only provide the vocal minority with an opportunity to continue to lobby government for self-serving changes to protect the status quo. The consumer will continue to be the pawn in the process.

OACFP commends the government for bringing forward Bill 152. They commend the policy and legal staff, Rob Dowler, the assistant deputy minister, and Liz Sandals, the parliamentary assistant who participated in this process, for preserving throughout the process an assurance that the BSAC recommendations, which were hammered out over a period of years, were adhered to in all processes in the changes in the act and the changes in the regulations.

While it's not perfect, the OACFP, which represents the vast majority of this industry, supports the passing of the bill in its current form without changes. The bill is written in a form that will provide industry participants and government staff with the latitude to make adjustments, where necessary, within the regulations before they can be proclaimed. The OACFP asks the standing committee to support Bill 152 as submitted and not to remove it from the overall modernization bill that's before you.

The Vice-Chair: Thank you very much for your presentation. We have about three minutes. We can divide it equally between the three parties. We'll start with Mr. Bisson.

Interjection.

The Vice-Chair: Okay. Government side.

Mr. Dhillon: Thank you very much. I have no questions.

The Vice-Chair: Sir, you have one minute.

Mr. O'Toole: Thank you very much. I appreciate your input because there have been some, if you will, people raising issues that I know are technical in nature and industry-specific. You're familiar with the clarification done by Minister Phillips that I received today?

Mr. Timney: Yes.

Mr. O'Toole: You've seen that?

Mr. Timney: I have not seen it, but I'm familiar with its content. It has been explained to me.

Mr. O'Toole: It has? That's good. The previous presenters were also more or less suggesting that the remnants of Bill 209 and the regulations, plus this Bill 152, would bring the industry to some level of fairness.

Mr. Timney: Yes. I believe Bill 152 and the regulations that will subsequently follow will—

Mr. O'Toole: For me, as a constituency person, I can only think of really three things that I'm genuinely interested in. I have no ties whatsoever, except I expect to be in one of those businesses some day for a brief period of time. It's the quality control issue, the affordability issue and the consumer protection issue. This all started back in the 1900s—

The Vice-Chair: Thank you, Mr. O'Toole.

Mr. O'Toole: I thought there was three minutes. I'll use all the time.

The Vice-Chair: I'm sorry. The time was divided equally between the three parties.

Mr. O'Toole: But he has passed his time.

The Vice-Chair: No, he said no and the other one said no. My apologies. Your time is up.

Thank you, sir, for your presentation.

HULSE, PLAYFAIR AND McGARRY

The Vice-Chair: Now we have with us Hulse, Playfair and McGarry Inc. I believe we have with us Brian McGarry, the chief executive officer and owner, and Tom Flood, senior vice-president; is that correct?

Mr. Brian McGarry: Yes, that's right. Thank you.

The Vice-Chair: Sir, you can start any time. You know the procedure. You have 15 minutes. You can divide it equally between speaking time and questions and comments.

Mr. McGarry: I am pleased to be accompanied by my colleague Tom Flood. Already his involvement has been explained.

I must say, just in passing, that both of us have spent some time in elected office, so I think we can appreciate what you folks do day in and day out for the province of Ontario, albeit our experience has been on the municipal level. We appreciate being given some time today and a fair hearing. We will try to keep our remarks relatively brief. Perhaps questions are as significant as the presentation itself.

I will only be addressing three areas: fairness in taxation, educational standards and transparency in bereave-

ment sector ownership, all of which are crucial, I think, not only to ourselves but to the public at large. The fact that these issues are in an omnibus bill is somewhat disconcerting, considering their importance to every citizen in Ontario. As we well know, death touches every family and every one of us eventually.

With regard to fairness in taxation as it relates to cemeteries, funeral homes and crematoriums, I have the following remarks.

Of course, as the previous speaker said, many of us have had the privilege to serve on the bereavement services advisory committee with Justice George Adams. There's no question—a very capable and fair gentleman who brought diverse groups together. His mandate was to create “a level playing field for industry participants that is open to competition, accepting of fair rules of taxation and regulation and responsive to the trends of changing consumer preferences.” Indeed, they are changing.

From this mandate and principle, it is obvious that the legislation and regulations should not create a situation where privately owned, independent funeral homes, which I represent in part today, continue to pay taxes as we have for decades, while some cemeteries at least will receive, I believe, special favour—varying in degree from no property taxes to grandfathered tax exemption to a notion that some cemeteries would pay into a care and maintenance fund, referred to by the previous speaker, which I believe only compounds the unlevel playing field.

I'd say to you, and I ask you to listen carefully, wouldn't it be grand if privately owned funeral homes were able to set aside some of their tax and instead invest these funds into our landscaped areas, our parking areas etc., which is in fact part of the cemeteries' property now and currently comes under care and maintenance? There's no distinct definition of a cemetery at this point, and I'm concerned how it will be distinct in the future.

I have to say that there has been a history here that would warrant why we're here before you today. It's rarely said to you that before the legislation has been proclaimed and before any regulations have been written, cemeteries have been servicing funerals on their tax-free properties, some for over 10 years already—I think that's worth noting—while the rest of us in our industry have been paying the regular taxes—you can only imagine what they would be—in Toronto, Ottawa, Hamilton and indeed rural areas. I think the answer is very clear and very simple: If any entity is entering the bereavement sector by way of funeral homes, crematoriums or cemetery lands, all should be treated equally, that is, all pay municipal taxes as every other citizen in Ontario does now.

I won't go through why fire trucks, police, ambulance, water services etc. service all of us, and they certainly service cemeteries too. So if a care and maintenance fund has been low over the years, there's a formula there; it has been there. Generally, 40% of the sale price of whatever product goes into a trust fund. What has happened to these funds I can't answer, but if they're

short, it shows a lack of good governance on their part with their trusts.

Attached to our submission you will find support of this principle by the Canadian Federation of Independent Business. They have examined the formula as it is and they're no more impressed with what has been suggested than we are.

Issue number two, educational standards for individuals engaged in advising bereaved families across Ontario: Yes, we are getting some insurance and we thank the minister for saying that funeral director standards will be maintained. It's not the funeral director standards we're concerned about; it's the standards of those who will be entering under this new legislation who are not funeral directors.

1730

We have two great centres. We have Humber College in Toronto and Boréal in Sudbury. They're enviable in their accomplishments for education and we should make sure that all bereavement sector participants have at least exposure to the training at these centres.

I'm going to suggest to you, and I'll stand by it, some conglomerate, large cemetery operations are having a curious but significant influence, and we'll see how the regulations will be written. I must remind you that we had in our partnership of Hulse, Playfair and McGarry for a number of years a large conglomerate cemetery. I can only say to you the severance of that relationship was happy on both sides, particularly our side. But time and time again I heard, "When the legislation comes forward, we'll carve out certain aspects of education." What that means is that contracts might be covered by regulation but the training—and this is an exact quotation—"will be accomplished by the cemeteries themselves."

I know what that means. I've witnessed it for a number of years. Permit me to translate what that training means. It means that you go out on the street and you sell to your neighbours, relatives and friends, and when you've covered these community contacts, the sales person is not likely needed any more. A revolving door of new sales people could be the norm and indeed is the norm.

I'm going to draw your attention to recent experiences in Hamilton, Ontario. There is an addendum attached here that explains it. As of today, there is yet another experience in the Hamilton Spectator of what I'm talking about, about sales people on the street who have received less than any meaningful education.

Again, a recent CBC program also depicted—and there's reference to that in my presentation. I won't go through the example, but it's not very pleasing.

If you want an out-of-province experience of what can happen when you have untrained personnel, all you have to do is click on to the Calgary Herald and look at the number of articles that have appeared over the past few years and see a nightmare personified when there are insufficient educational standards and a lack of locally owned monitoring systems.

Our point is very clear: Sales training is not what bereavement personnel need but rather an understanding of grief and its implications. Please, don't let educational standards in the bereavement sector be eroded or carved up to appease a sales force imposed upon a vulnerable client base, that is, mostly senior citizens. Not exclusively, but mostly senior citizens.

Whenever I hear and see—and I have first-hand experience; I'm underlining that. We had a partner for a number of years. Whenever I hear and see the large corporate interests emphasize sales of products, do you know what I've said to them in our boardroom any number of times? I remind them that, in my 45 years in funeral service, I've never yet received a thank you letter for the nice mahogany casket—not once in 45 years. Our firm is 81 years old and my predecessors, I suspect, never received a thank you for a mahogany casket. But you know what they did receive? We've received complimentary letters—most of them complimentary, at least—on services provided by our staff, women and men who are educated by Humber College and dedicated in the understanding of grief.

My point: Products are of very little consequence in our work today. But I don't think that some of the larger conglomerate organizations have appreciated that as yet.

One more illustration, if I may, as to why transparency in funeral home ownership, crematorium ownership and cemetery ownership is necessary, if not in the bill, certainly in the regulations. I can assure you, transparency is being avoided as we speak. I'm going to give you an example. It's a bit graphic but it's accurate and we had the experience in Ottawa.

Less than one year ago, two Asian families flew from China to Ottawa—you may have read about it in the newspapers—to repatriate the remains of their two unfortunately murdered boys, university students in Ottawa. Think of this. En route to their lodging in Ottawa, the families passed a huge billboard displaying a large casket coming at them with the caption: "Think Outside the Box." In other circumstances perhaps this message might be humorous but not when you're collecting your sons' remains to take back to their homeland.

Their question upon arriving at our funeral home was exactly this—my wife happens to be Asian, so she was able to talk to them in their own language—"Are you associated with the people responsible for that billboard?" Thankfully, we could say, "We are not associated."

You know, the government has mandated that the bereavement sector advisory committee come up with a clear set of rules and "mandatory disclosure of ownership and business affiliations." Presently, funeral businesses are being bought up across the province at a rapid pace. Some have already gone; more will have that happen. Think of this: Thousands of families have trusted literally millions of dollars—the Board of Funeral Services can give you the figure of the millions of dollars that are trusted in prepaid funds—only to discover that their prepaid trusts are now administered through a new owner

that's barely identified, and never identified in most cases, in their advertising, whether it be electronic, newspaper or otherwise.

Transparency of ownership is needed, not only in prepayments but also for families arranging at-need funerals. I am going to suggest to you that large business interests tend to remain invisible behind the reputation of the former local owner: That's done on purpose. Conglomerates are reluctant participants in the provincial policy—and it is policy; we need it written in regulations—of owner transparency. It doesn't exist. The previous speaker kept saying, "Why are you worried?" That is why we are worried.

We provide a necessary service to the most vulnerable in their time of need—I mean, you can appreciate that. Is it too much to ask for laws and regulations? And I emphasize regulations. I think Mr. Dowler will do his utmost to see that what may be weak in the legislation will be picked up in the regulations. I certainly hope so. That will keep decency and professionalism at the forefront.

In its present form, Bill 152 downplays the importance of the three points I've raised, and I submit to you that without some change to the bill, accompanied by meaningful regulations, a great disservice will be done, not only to independent funeral service providers but also to the taxpaying consumers of our province.

I'd rather keep a little time for questions, and I thank you for hearing us out. We are pleased to answer any questions you may have.

The Vice-Chair: Thank you, sir, for your presentation. Now we will start with the government side. Does anybody from the government side have a question? Mr. Dhillon, go ahead, sir.

Mr. Dhillon: Thank you for your presentation. How would these amendments affect your business?

Mr. McGarry: They don't create a level playing field. I want to deal with taxation very quickly. They don't create a level playing field. I hear how the trust funds will allow—I don't care whether it's \$100,000 or \$5,000. We, independents, can't take one tax dollar for our care and maintenance of our grounds—never mind our buildings—or for our parking etc. Parking costs a lot, by the way, in urban areas today. Can you imagine 80 parking spots in downtown Ottawa or Toronto? That's a lot of money. We can't divert any of our tax funds to take care of that property. So I'm asking the question: Why

would another segment of our industry be allowed to use some funds for care and maintenance of their properties?

The Vice-Chair: Thank you, Mr. Dhillon. Mr. O'Toole.

Mr. O'Toole: You raised three separate points, and some of them contradicted the previous presenter. I'm not trying to start a conflict here, but this is exactly what we as innocent elected people, you will say—one of the previous presenters said that 94% of the care and maintenance funds are in deficit and that this particular change to paying the payment in lieu of taxes will help to offset this deficit. Is the private holding, the for-profit or commercial enterprise in cemeteries—do they have deficits?

Mr. McGarry: Well, of course, we haven't been allowed to be—I'm talking about the independent funeral directors.

Mr. O'Toole: Yes, but I mean where there are relationships with—

Mr. McGarry: Do you know why I'm suggesting they're in deficit? If you can't use 40% of the fee paid by the consumer to the benefit of your care and maintenance, there's something wrong, somewhere, with management. I mean, we survive on downtown property.

Mind you, those who have been in the business for a while in cemeteries on non-taxable property hold up the fact that "Oh, we are much less expensive than McGarry." I guess they are less expensive. Do you know that we pay nearly a quarter of a million dollars in property taxes a year? A quarter of a million dollars—and these folks want to pay zero. How is that level?

Mr. O'Toole: I think that the industry—you really are quite a contradictory group of presentations is leaving me with some unsettledness.

The Vice-Chair: Mr. O'Toole, thank you very much. Mr. Bisson.

Mr. O'Toole: These hearings are just being rushed anyway, and they'll pass this and ram it through, so—

The Vice-Chair: Okay. Thank you, Mr. O'Toole. Thank you, sir, for your presentation.

Mr. McGarry: Thank you.

The Vice-Chair: Now we are adjourned until Monday. Thank you very much to the people who attended this session and to all the members from both sides of the House, especially Mr. O'Toole, Mr. Dhillon and everybody here, and the staff, the clerk and everybody.

The committee adjourned at 1740.

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Deuxième session, 38^e législature

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Standing committee on social policy

Ministry of Government Services
Consumer Protection and Service
Modernization Act, 2006

Comité permanent de la politique sociale

Loi de 2006 du ministère
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 4 December 2006

Lundi 4 décembre 2006

The committee met at 1604 in committee room 1.

ELECTION OF CHAIR

The Vice-Chair (Mr. Khalil Ramal): Good afternoon, ladies and gentlemen. I guess the first step of our program for this afternoon is we have to elect a Chair. I'm the Vice-Chair. Can I do the job? I guess. I'm asking the floor.

Mr. Vic Dhillon (Brampton West–Mississauga): I nominate Ernie Parsons.

The Vice-Chair: Mr. Parsons, are you accepting the nomination?

Mr. Ernie Parsons (Prince Edward–Hastings): Yes, I do.

Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale): I second it.

The Vice-Chair: Any further nominations? Seeing none, congratulations, Mr. Parsons. You're the Chair of this committee. Thank you very much.

MINISTRY OF GOVERNMENT SERVICES
CONSUMER PROTECTION AND SERVICE
MODERNIZATION ACT, 2006LOI DE 2006 DU MINISTÈRE
DES SERVICES GOUVERNEMENTAUX
SUR LA MODERNISATION DES SERVICES
ET DE LA PROTECTION
DU CONSOMMATEUR

Consideration of Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services / Projet de loi 152, Loi visant à moderniser diverses lois qui relèvent du ministère des Services gouvernementaux ou qui le touchent.

The Chair (Mr. Ernie Parsons): Good afternoon. Thank you, first of all, for the overwhelming support of my colleagues. We are late. Unfortunately, the Legislature ran a little later than normal. We will do our best to catch up.

ONTARIO RESTAURANT, HOTEL
AND MOTEL ASSOCIATION

The Chair: The first item is the Ontario Restaurant, Hotel and Motel Association. I would ask if you'd come

forward. You have 15 minutes in total. Any time left over will be used for questions by the three parties. If you would state your name for Hansard, it would be appreciated.

Mr. Terry Mundell: Mr. Chairman and members of the committee, my name is Terry Mundell. I'm the president and CEO of the Ontario Restaurant, Hotel and Motel Association. With me is my colleague, Syd Girling.

I'd first like to thank the government for including our association in their consultations leading up to the proposed amendments to the Liquor Licence Act found in Bill 152. The final package reflects and addresses many of our industry's concerns.

On the whole, we think the package of amendments to the act, its regulations and the AGCO's policies and procedures strike a balance between community safety and social responsibility while cutting red tape, lessening the administrative burden and offering greater flexibility for liquor licensees.

To that end, we are certainly pleased that the government has adopted the ORHMA's recommendations, such as establishing monetary penalties for certain offence categories and providing greater flexibility to liquor licensees by expanding the allowable licensed areas, as well as the promise of greater latitude in licensee pricing of beverage alcohol and all-inclusive travel packages.

However, we would like the government also to consider further industry concerns not addressed in the current package of reforms and provided in the ORHMA's original submission to the Liquor Licence Act review committee. They include recommendations around minors and false ID; the ability for licensees to take advantage of value-adds and price specials available to retail consumers; the separation of the adjudicative and tribunal role of the board of the AGCO from staff enforcement functions; streamlining the transfer of liquor stock when a licensee changes locations under a new liquor licence; and expanding permitted stadium events to permit the consumption of beverage alcohol in tiered seating during conventions.

Many of the proposed amendments to Bill 152 provide greater powers in licensing and enforcement to the Registrar of Alcohol and Gaming. The ORHMA has concerns as to how and when these new powers would be exercised and under what conditions.

For example, the registrar's ability to charge applicants or licensees "reasonable costs" of any AGCO in-

quiry or investigation under subsection 6.1(3) has us especially concerned for the following reasons: Contrary to natural justice, there's no appeal mechanism available to an applicant or licensee on the imposition or assessment of investigation costs; "inquiry or investigation" or "reasonable costs" are not defined, rendering the power too open-ended and vague; when and how often the registrar might choose to invoke this power is not addressed—any boundaries or limits on the application of this power are absent; it imposes a further and considerable financial and administrative burden to obtaining a liquor licence over and above current licensing fees; and the OPP and AGCO are already sufficiently funded to conduct inquiries and investigations.

For the above reasons, the ORHMA recommends that policies and procedures be developed in concert with the hospitality industry to establish boundaries and parameters around the registrar's power to charge back the costs of AGCO investigations or inquiries.

Enhancing the authority of the AGCO's registrar to refuse a licence application or to revoke or suspend an existing licence upon failure to demonstrate sufficient control over the business under clause 6(2)(g.1) also has us concerned. In the absence of any definitions or guidelines, what constitutes "to the satisfaction of the registrar" and "exercise sufficient control" is vague. As this is one of the bases for refusing to issue a licence or suspending or revoking an existing licence, further work is needed to find more exact wording or guidelines controlling when and how it is applied. Also, unlike the other conditions to issuing a licence under subsection 6(2) of the act, this appears to be a reverse onus; i.e., the applicant has to demonstrate to the satisfaction of the registrar. It should be the other way around: The registrar must prove or demonstrate.

1610

New section 6.1 gives enhanced authority for the registrar to investigate the associates of a liquor licence applicant or existing licence holder. The ORHMA has continued reservations that such a proposal may serve to discourage legitimate third-party investors in licensed establishments through undue invasion of their privacy, generating considerably more red tape and slowing down the licensing process. While the ORHMA promotes, endorses and represents a responsible hospitality industry, neither should we create a barrier to legitimate investors who contribute to industry's economic health and sustainability.

A new risk-based licensing system is being proposed under section 8.1. While generally in support of the concept, we question the role of the board in developing policy. It's always been our understanding that the role of elected government is to develop policy, while the role of boards and commissions is to implement it. However, section 8.1 has the board of the AGCO developing policy by establishing criteria and specifying a range of conditions that the registrar may impose on his assessment of risk. The government should revisit section 8.1 to determine if the board is the proper vehicle to be developing public policy.

The registrar, under amended subsection 8.1(5), will be given the authority to consolidate two or more liquor licences at the same premises and under the same licence holder. This ability is apparently at the discretion of the registrar without having to hold a hearing and with no appeal mechanism to the licence holder. The ORHMA recommends that the registrar only be able to exercise this power with the consent of the licensee. Lacking consent, the registrar should have to issue a notice of proposal with reasons and hold a hearing to consolidate any licences.

With the proposed amendment to subsection 8(4) and subsection 20(1), the registrar can issue a new type of notice of proposal, namely, to refuse an application. In essence, this will unfairly tip the balance in public interest hearings against the licence applicant, because the registrar's counsel, normally neutral in public interest hearings, can now become actively involved on the side of objectors. We recommend that this new category of notice of proposal to refuse an application not be allowed for public interest situations.

As outlined in the latest issue of the AGCO's Licence Line, there is a proposed new regulation creating an offence for disorderly conduct to occur on property adjacent to a licensed establishment. The intent is to address disorderly behaviour, like fighting, inside an establishment dealt with by moving the problem to just outside the establishment. The ORHMA is not in favour of such a regulation as it is, among a host of reasons, redundant and contrary to a licensee's current obligations under the act and regulations.

Subsection 45(1) of regulation 719 already creates an offence for a licensee to permit drunkenness, riotous, quarrelsome, violent or disorderly conduct to occur on the premises. As there is no definition of "premises" under the act or regulations and the section does not specify "licensed" premises, this can have wide interpretation to include outside an establishment as well. Also, police already have a considerable range of legal powers to deal with disturbances inside or outside a licensed establishment under the Criminal Code or the Liquor Licence Act.

Most importantly, such a regulation runs contrary to a licensee's obligation under section 34 of the act to ensure that those breaking the law do not remain on the premises and are removed, by reasonable force if necessary. Such a proposed regulation creates a situation of double jeopardy for the licence holder and is, therefore, ill-conceived.

With regard to gift cards, I would like to briefly comment on subsections 13 and 14, regarding amendments to the Consumer Protection Act to give the government regulation-making authority concerning gift cards.

The government's communications regarding gift cards have been brief and generally limited to discussion around expiry dates. As the policy work will be done in regulation, not in the legislation itself, I'll keep my comments brief.

As we understand it, government intends on prohibiting expiry dates on gift cards purchased by consumers.

The ORHMA looks forward to working with government to ensure that the following elements are protected in regulation: that regulations regarding gift cards refer exclusively to those gift cards that are purchased by consumers and have a specified dollar amount; that gift cards or gift certificates used by businesses for promotional or charitable purposes not be included within the scope of the regulations; that gift card agreements not include those gift cards offering a percentage value, such as 10% off a meal; and that regulations developed recognize and account for the administrative cost to business concerning those gift cards that are unredeemed for a long period of time.

The ORHMA looks forward to working with the government throughout the development of regulations under the Liquor Licence Act and for gift cards under the Consumer Protection Act and to continuing the constructive dialogue in developing a package of reforms that accommodate industry and government.

I'd like to thank the members of the committee for their time today, and I, along with my colleagues, would be pleased to answer any questions you have.

The Chair: Thank you. We have about six and a half minutes left.

Mr. Dhillon: Thank you very much for your presentation. How big is the gift card market for your industry?

Mr. Mundell: It's a fairly significant tool that our businesses use, whether it's in the accommodation industry, the resort industry or through the restaurant industry. It is a fairly typical marketing or promotional piece that consumers are used to in Ontario.

Mr. Dhillon: That's fine. I have no more questions.

The Chair: Any other questions? You have clearly impressed everyone.

Mr. Mundell: It's a great way to get caught up, Mr. Chair.

The Chair: Yes, thank you. I appreciate that.

Mr. Mundell: Thank you for your time.

The Chair: We're going to take a very short recess, as there is a quorum call in the Legislature. They are short individuals. We will be about two minutes. Hopefully it will clear itself up.

The committee recessed from 1616 to 1618.

POLICE ASSOCIATION OF ONTARIO

The Chair: We are back in session. The next presentation is the Police Association of Ontario. Mr. Miller, I would ask that you state your name for Hansard. You have 15 minutes, although you're quite free to use less.

Mr. Bruce Miller: Thank you. I will try, Mr. Chair.

My name is Bruce Miller, and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer for over 20 years prior to taking on my current responsibilities.

The Police Association of Ontario represents over 30,000 police and civilian members from every municipal police service and the Ontario Provincial Police

Association. We've included further information on our organization in our brief.

We appreciate the opportunity to provide input into this important process. As you know, Bill 152 covers a number of areas, many of which are outside of our expertise. We plan to address those issues that we believe could impact on community safety, and we'll be limiting our remarks to the proposed changes to the Liquor Licence Act.

Working closely with government, the hospitality industry and other concerned stakeholders, the PAO has been pleased to provide our experience and expertise to this important policy debate. Let me say at the outset that our province is fortunate to have a responsible hospitality industry that understands and shares our goal of maintaining the safety of Ontario's communities. We look forward to working with them and other stakeholders to ensure safe communities.

We support the following initiatives that are either contained in Bill 152 or are associated with the legislation:

- Broadening the scope of the AGCO investigations during the licensing process;

- Enhancing the authority of the AGCO to refuse licence applications and revoke or suspend a licence that was previously issued;

- Giving the AGCO the power to revoke or suspend licences if disorderly conduct occurs on property adjacent to the establishment;

- Creating a process to allow the AGCO to use a risk-based licensing system;

- Allowing for the introduction of a schedule of monetary penalties that may be imposed with respect to contraventions of those acts and regulations administered by the AGCO;

- Allowing establishments to have additional areas of their premises licensed, including hallways and washrooms. As you know, this change will allow consumers to carry their drinks with them throughout an establishment, thereby not having to risk leaving their drink unattended while using the washroom or other facilities.

We appreciate that some of these initiatives will necessitate regulatory changes and/or changes to AGCO policy. As committee members appreciate, there are also complementary initiatives under way, such as changes to the private security industry, which address the activities and role of so-called bouncers in hospitality settings. Some of these initiatives will no doubt intersect with the changes to Bill 152. As a result, we believe that it would be helpful to have further consultations on these important issues and would be pleased to participate in the process.

We support the proposed changes to the Liquor Licence Act in Bill 152 and believe that many of the changes will help to enhance community safety. The legislation reflects the need for provincial control and consistency across the province. However, our organization remains very concerned about the possible impact the City of Toronto Act and the proposed new Municipal

Act may have on community safety and feel that we should once again raise the issue in conjunction with our presentation today. Both pieces of legislation will allow a municipality to pass bylaws extending the hours of sale of liquor in all or part of the municipality by the holders of a licence, and a bylaw may authorize a specified officer or employee of the municipality to extend the hours of sale during events of municipal, provincial or national significance.

In 1996, the hours of sale for licensed establishments was extended to 2 a.m. This was done in part to address some of the inequities facing businesses that operated at or near provincial and national borders. The new 2 a.m. closing brought Ontario in line with other jurisdictions.

We have spoken to our members in Ottawa, Niagara Falls and Windsor. Police services in these jurisdictions face many challenges coping with people who are drinking and driving in an effort to take advantage of extended hours in licensed premises in neighbouring communities. We believe that granting discretionary authority to municipal governments to set hours of operation for the sale of liquor may replicate some of the problems.

Hours of service in licensed premises need to be consistent across the province in order to ensure community safety. Maintaining consistency in liquor licensing provisions will help to ensure that additional problems associated with drinking and driving do not occur.

Thank you. We'd be pleased to answer any questions that you may have.

The Chair: I believe the NDP has the first question on this.

Ms. Cheri DiNovo (Parkdale-High Park): I'll pass, Mr. Chair. Thank you.

The Chair: Mr. Ramal?

Mr. Khalil Ramal (London-Fanshawe): Thank you, Mr. Chair. Congratulations on your election.

The Chair: Thank you.

Mr. Ramal: Thank you, Mr. Miller, for your presentation. I know about the concern I heard you speaking about. But don't you think that working together closely with the AGCO is going to eliminate a lot of high-risk people getting licensed and will benefit your members by keeping them from trouble and also making them aware of the issues?

Mr. Miller: I think that's one of the issues that we raised today in our presentation. As you know, many of the issues in Bill 152 have to be covered off by regulation and/or AGCO policy. Certainly we would offer our assistance to help in developing the policy and regulations. We have worked closely with the government, the hospital industry and other concerned stakeholders on this issue. We just urge the government to continue those consultations so that together we can ensure that communities in Ontario remain safe.

Mr. Ramal: Do you think that if this bill passes with the same provisions and sections, it wouldn't be enough to cover your concerns? Or do you want to add something to it in order to strengthen it?

Mr. Miller: In fairness, the hours of service are outside this legislation. That was an issue in the Municipal Act and the City of Toronto Act. But certainly, in this bill we support all the initiatives dealing with the Liquor Licence Act. We think it's going to help to make a safer Ontario. There are a number of issues that need to be covered off by regulation and policy, and we'd certainly like to work with government and the hospitality industry to deal with those issues.

Mr. Ramal: Thank you very much.

The Chair: Ms. Matthews, we have about two minutes left.

Ms. Deborah Matthews (London North Centre): Thank you for your presentation and for all the good work you do. I wonder if you could comment on the previous speaker's concern about something you actually support, the regulation creating an offence for disorderly conduct to occur on a property adjacent to the licensed establishment. I think, if I understood properly, the previous presenter said, "We need to have the right to throw people out." I wonder if you could just comment on that.

Mr. Miller: I think that's another area that needs to be covered off in further discussions. We share some of the concerns with the industry. I think everybody would agree that the licensee has to be responsible if they're connected with an act that occurs on adjacent property; by that, I mean if there's over-service or something of that nature.

But incidents will happen which are beyond the licensee's control and we recognize that just because an incident happens outside a licensed premise, there may be no connection and the licensee shouldn't be responsible for that. We also don't believe that the licensee should be responsible for policing or maintaining community safety outside his or her establishment; that's a role for fully trained police officers.

Should there be some accountability in certain cases? Yes. But I think those are some of the areas that we need to work together on with the hospitality industry and government.

Ms. Matthews: Thank you.

The Chair: Mr. Ouellette?

Mr. Jerry J. Ouellette (Oshawa): Thank you, Mr. Miller, for your presentation. A couple of things: You mentioned broadening the scope of the investigation during the licensing process. Do you have an expected time frame that you would think would be acceptable to make sure that there is—one of the biggest things that we as elected officials hear about from new facilities opening is that it takes so long to get through the process to get that done. What do you think is an acceptable time frame to make sure that the process is completed so that when somebody is opening a new restaurant, they can go in and say—within a month, 30 days, 90 days?

Mr. Miller: That would be something that's outside of our expertise, although we believe, obviously, that thorough investigations need to be made. We'd need

some more information before giving you a definitive answer on that.

Mr. Ouellette: Okay. To carry on with what Ms. Matthews had mentioned about the disorderly conduct on adjacent properties, typically what happens is that a police force has its staffing geared toward when the bars are closing, at 2 a.m. now. A lot of times, somebody will get thrown out at 1 o'clock, and they'll head to another spot. They're in the parking lot, and a confrontation takes place there. When this process of revoking or suspending a licence takes place, how can there be accountability in there? And who's going to be the one to make the decision as to whether somebody was or was not responsible for having that patron in their facility at the time? Because a lot of times they could walk in the door and the doorperson escorts them right out immediately. What sort of provisions do you see as having the ability to make sure that the onus is not on the one who is not responsible?

Mr. Miller: From a policing perspective, it's always something that we try to prove, some sort of relationship between the incident and the people outside the establishment. Had there been over-service involved and things of that nature? If we could prove that those people were coming from that premise, then the licensee has to take some onus for the problems that happen.

Also, in the entertainment district, it's very difficult to prove where people came from sometimes. I don't think that's a situation where the hospitality industry or the licensee should be held responsible.

Mr. Ouellette: I would expect that the industry would have some concerns about other facilities that have escorted individuals out who caused ruckuses, particularly in some of the new complexes where there is a series of facilities or service providers in a similar area, within walking distance. It could cause problems.

One last question is, I know you spoke about a specified officer or employee of the municipality to extend the hours of sale. How do you envision that impacting policing? Normally, when a force looks at its hours of operation, when the bars are closing and within the time frame immediately after that, they make sure there are sufficient officers on duty at that time. However, if there's an extension, how would that affect the policing community in making sure its duty hours are complied with?

1630

Mr. Miller: It's obviously going to put strains on police services, but we're also concerned about the drinking and driving aspect. If we get a neighbouring community that extends their bar hours past those of another, it's going to have the unintended effect of encouraging people to drink and drive. Certainly we saw that at border crossings in Windsor, Niagara Falls and Ottawa. We don't want to see the same thing happen in adjacent communities such as London and St. Thomas, for example, or other areas of the province.

Mr. Ouellette: Thank you.

The Chair: Ms. DiNovo?

Ms. DiNovo: I apologize; I had to come in a little bit late. But I did have a question about the carrying-of-the-drink-into-the-washroom aspect of this bill. I just wanted to know the police input on that. It seems to me this has put the onus on the victim rather than on the victimizer. Again, this is a crime committed by, presumably, mostly males on women, and yet we're asking the woman to take the initiative here to protect herself, rather than the onus being on the male. From a law-and-order perspective—my husband's a former police officer—I'm wondering what you thought about an aspect of this bill that puts the onus on the victim rather than on the victimizer.

Mr. Miller: I don't know how you can approach it in any other manner. To me, it makes sense that people aren't forced to leave their drinks unattended at a table. It just makes good sense. I don't think it's a case of putting the onus on somebody; it's just that the government is taking steps to do what they can to prevent what has become a problem. Personally, I think it makes common sense. We would be the first ones to call for stiffer penalties to hold people who do these types of things accountable. We've been doing that for years. But in terms of changing the licensing provisions, we see this as a common sense provision and something that we support.

Ms. DiNovo: It seems common sense in one sense. In another sense, it seems like we've thrown up our hands and said, "We can't stop date rape and the date rape drug phenomenon, so now the only recourse is to get the woman to take the drink into the washroom," which seems bizarre to me, quite frankly. I'm just asking, from a police perspective, would you not want to see some provision other than, again, the onus on the victim?

The Chair: I'm sorry, but we're out of time.

Ms. DiNovo: Okay. Thank you.

ONTARIO BAR ASSOCIATION

The Chair: The next presentation is the Ontario Bar Association. I would ask that you state your names for Hansard.

Mr. James Morton: My name is James Morton. I'm the president of the Ontario Bar Association. We are delighted to be here today. Joining me today are Paul McCarten, from the Ontario Bar Association's real property section, and Wayne Gray, from the Ontario Bar Association's business law section, where Wayne serves as the chair of the corporate law subcommittee.

The Ontario Bar Association is particularly grateful today for the care that the committee is taking with this important legislation. You will hear after us representations from the Law Society of Upper Canada. While we deal with different aspects of the legislation, we are generally supportive of their position.

Briefly, a little background on the Ontario Bar Association. This is our centenary year; we are 100 years old this year. We are the largest voluntary legal association in Ontario, representing 17,000 lawyers, justices, law

professors and law students. We are member-driven; that means that our policies and directions are grassroots based and reflect the genuine concerns of our members. We represent lawyers through 35 associations based on expertise. It is based on that expertise that I will now turn the floor over to Paul McCarten, representing the real property section.

Mr. Paul McCarten: Good afternoon. I am the former chair of the real estate section of the OBA. I hope it's obvious to you that the bar association in the real estate section has no particular axe to grind in talking about these issues. There's no constituency that we represent other than the public interest. Generally, we support Bill 152 as it relates to title fraud and mortgage fraud. We think it's an important initiative of the government and one with some urgency.

There are a number of elements to our report. I'm only going to deal with one important aspect because there's a qualification that we have, frankly. We have some reservations about a particular part of it. What that relates to is the law that is incorporated that really proposes to change what has been a fundamental principle in the land titles registration system in Ontario, the western provinces, New Zealand and Australia for many years: that a person can rely on the title that is in our registration records, and that innocent purchasers and mortgagees can receive good title based on that. This legislation proposes to make a change which really can compromise that very significantly, and it says that in the context of title fraud.

One of the challenges about title and mortgage fraud is that there are always two innocent victims, one on either end of a transaction. The fraudster is in the middle, taking money. The homeowner is on one end of it and the purchaser, the innocent purchaser or the mortgage company, is on the other. So there are two injured parties. The challenge for a Legislature and for us in giving advice or comments about this is in trying to decide how you treat those interests, because there are going to be people hurt no matter what happens.

I need to talk about two cases very briefly to illustrate the problem. The first one is Household Realty. The Court of Appeal for Ontario decided this case fairly recently. It involved one of two homeowners, the wife, forging a power of attorney, placing mortgages on her home, and when the other homeowner, her husband, found out about it, he took the position that those mortgages were fraudulent and that he was not responsible for paying those mortgages. Frankly, that has been the law in Ontario. The Court of Appeal could not stomach the concept of a homeowner, the wife, getting to stay in her home, and blowing away the mortgages that were registered on title by these innocent mortgagees, so the Court of Appeal actually held, very recently, that the mortgage company's mortgages were valid and enforceable. That's called the Household Realty case, and that turned what has been the law on its head and essentially said that a fraudster can come up with a deed and transfer your house tomorrow to somebody else, and it's gone, just like

that. That's not the law of the province of Ontario and that's why this legislation is important. I've got to say that that's one of the things—there's no doubt about it—that the legislation fixes, and it needs to do that.

The second case—I'm going to call it the Lawrence case—was in the news last week. It was argued before the Court of Appeal. In that case, a fairly straightforward mortgage fraud case, a fraudster conveyed the Lawrences' home to himself and took out mortgages in favour of a company called Maple Trust. The fraud was discovered, and the argument before the Court of Appeal, and there hasn't been a decision by that court yet, by the Lawrences was twofold. First of all, the transfer by the fraudster is void. We agree with that; the legislation says that that's the case. The second thing they said was that the mortgage given by the fraudster to the mortgage company, Maple Trust, is also void. We don't agree with that.

1640

There's a certain attractiveness about the logic of protecting a homeowner's interest when they've been taken advantage of, but there's a price when you do that. I need to talk about that. The price for that is the land registration system. If Bill 152 is passed the way it's drafted and doesn't incorporate the changes that I am proposing, you'll never again be able to get an opinion from your lawyer, when you buy a house, that you own the house for sure. There will always be a qualification, "subject to fraud." Why? Because Bill 152 does not allow an innocent third party—a purchaser or a mortgage company—to rely on what's registered on title. So the land registration system, we think, is a fundamental part of Ontario. As I said, this system is accepted across the western part of our country, in Australia and in New Zealand, and it does protect innocent purchasers and innocent mortgagees, but there's a price that's paid here. As I said before, there are two innocent parties to this fraud. In suggesting that Bill 152 be amended, as I've set out in the written memorandum, so that we can rely on the registered title, what is critical is that the government does implement something they are suggesting in here, which is a very different approach to compensation to the compensation fund by people who are injured. The legislation does that. Frankly, this legislation is implemented by regulation, and I would encourage you to focus on that. The compensation system in Ontario has not been a very satisfactory process, and it was like getting injured twice when you were making a claim against the fund. Now the land registrar is given a much greater power to implement—it should be like an insurance claim. Where there is an obvious fraud, the person who's injured should be able to get a claim back.

I will just conclude my remarks by saying that we support the legislation with that proviso.

Mr. Wayne Gray: Thank you, honourable members, for allowing me to speak today on Bill 152. I will be addressing the business law modernization portions of the bill, namely, schedule B on the OBCA amendments, and schedule E on the PPSA amendments.

Generally, the OBA is supportive of these amendments but says that they fall short. As you will recall, the recent impetus for OBCA and PPSA reform traces back to the May 2005 Ontario budget. On top of the usual fiscal focus, the budget also announced some non-fiscal business law reform initiatives. In particular, it was announced that the then Minister of Consumer and Business Services, the Honourable Jim Watson, would introduce securities transfer legislation later that year. In addition, the minister was to lead the implementation of a multi-year plan to update Ontario's commercial law framework and, after implementation of the Securities Transfer Act, or STA, develop comprehensive legislation to modernize Ontario's corporate laws.

The budget explicitly recognized the need for Ontario's corporate and commercial laws to be competitive by global standards. It accepted the considerable evidence that businesses view the regulatory environment as an important factor in making global investment decisions. Accordingly, the government said that it recognized the importance of securing Ontario's position as an attractive and secure place to invest. It also recognized updated commercial and corporate laws as supporting a competitive business environment that attracts investment and ensures prosperity for Ontarians.

This was a powerful message, and business law practitioners eagerly anticipated the details. We didn't wait long. Within a matter of days, Minister Watson, at an OBA program, no less, elaborated a three-phase program on business law reform.

The first phase: The STA will come into force this coming January 1. The government is to be commended for this very important initiative. Here, however, the government's sins are those of commission, not omission. In particular, it adulterated the STA with poorly conceived provisions dealing with crown securities.

With respect to phase two, the business reform project which Bill 152 addresses, Minister Watson stated that it would focus on making additional changes to the OBCA to modernize it and make it more consistent with its federal counterpart. There were three stated highlights.

First, serious consideration would be given to eliminating the requirement that a majority of the members of the board of directors on an OBC corporation be resident Canadians. Minister Watson described the rule as an unnecessary limitation that few other jurisdictions require and one that may force corporations to trade their most qualified and experienced people for those who are geographically convenient.

The second and third specific highlights were unlimited liability corporations, or ULCs, and unanimous shareholder agreements. Bill 152 makes many salutary technical changes to the OBC and the PPSA. The problem with Bill 152 is the converse of the STA. Bill 152 reflects sins of omission rather than commission. Let me give three specific examples.

Directors' residency: Bill 152 cuts the residency requirement in half but does not eliminate it. Ontario remains at a competitive disadvantage to those juris-

dictions where there is no residency requirement. The only other provinces or territories in Canada that impose such requirements are the prairie provinces and Newfoundland and Labrador.

Second, ULCs: In contrast to Alberta last year, Ontario takes a pass. It has thus fallen behind Nova Scotia and Alberta as the place through which US investors, who represent approximately 70% of investment in Canada, will invest in the Canadian economy to receive flow-through US tax treatment.

Third, PPSA: Since at least its 1998 report, the OA has been saying that the Ontario PPSA requires clarification as to licences, an important asset in many businesses and an important underutilized source of secured collateral. Ontario businesses and lenders are still struggling under an almost 20-year-old Ontario Court of Appeal decision that held that tobacco production quotas cannot be the subject of a security interest. Courts in other provinces have not followed the decision. A statutory amendment will enable borrowers to assess additional collateral and at the same time help harmonize Ontario's PPSA with the PPSA regimes in its sister provinces.

I do not wish my remarks to be taken as a criticism of what is in Bill 152 or the members of the ministry staff who contributed to the bill. Both the OBCA corporate law subcommittee and the PPSA subcommittee have the highest regard for Allen Doppelt, John Mitsopoulos and others at the ministry who have worked tirelessly and well on the STA and the OBCA and PPSA amendments. Again, our criticism is not with what is in the bill but with what has been left out, for unexplained and unfathomable policy reasons.

Unfortunately, the net effect of the omissions is that Bill 152 does not live up to the promise of the 2005 budget to make Ontario business laws competitive with those in other Canadian jurisdictions, let alone globally. Ontario is still at the bottom tier on directors' residency, unlimited liability corporations and collateralization of licences. Bill 152 falls far short of what is required to signal that Ontario still aspires to become Canada's leading commercial law jurisdiction.

The OBA therefore urges the standing committee to complete business law reform with a bang, not a whimper. Thank you.

The Chair: Thank you. There is no time for questions.

MULTI-STORE GIFT CARD COALITION

The Chair: The next presenters are the Multi-Store Gift Card Coalition. As you've heard me state earlier, would you read your names into the Hansard record.

1650

Mr. Heath Applebaum: Thank you, Mr. Chair and members of the committee. Good afternoon. My name is Heath Applebaum, manager of corporate communications for the Cadillac Fairview Corp. Ltd. Cadillac Fairview owns and manages 29 of Canada's largest retail shopping centres, 18 of which are here in Ontario, such

as the Toronto Eaton Centre, the Toronto-Dominion Centre, Fairview, Erin Mills, Masonville and the Promenade, just to name a few. I'm speaking to you today in support of consumer protection, full disclosure of all fees and, speaking for Cadillac Fairview in particular, we do not have expiry dates on our shop card at all.

I'm here representing Cadillac Fairview and a growing coalition of companies across Canada who issue and/or administer multi-store gift cards. Multi-store gift cards can be used at more than one store or chain of stores at multiple locations. They are quite different from standard retail gift cards issued by individual retail stores.

Joining me here today is Michael Miroslaw, president of StoreFinancial Services of Canada. StoreFinancial implements and processes multi-store gift card programs for shopping centres across Canada, the United States, Puerto Rico, Canada and the United Kingdom.

We're pleased to be here to discuss section 8 of Bill 152. Our comments today are limited to the issue of multi-store gift cards as they pertain to disclosure fees, expiry dates and cancellation rights on gift cards. Our group has also been invited by the ministry to consultations being held later this week, and we look forward to explaining how new regulatory provisions can both protect consumers and accommodate the significant differences between single-store retail cards and multi-store gift cards. Our ultimate goal is that consumers will continue to have full confidence in the services we offer.

Our purpose for appearing before you today is the following:

- to provide an overview of the differences between multi-store gift cards and single retail cards;
- to share the current marketing and administrative practices of multi-store gift cards in Canada;
- to provide background information on how multi-store gift cards work in the US and Canada;
- to provide insights into how US states have approached legislative guidelines for the selling and redemption of gift cards;
- most importantly, we hope to have some time at the end to answer questions you may have on these important issues.

Unlike single retail cards, the recipient of a multi-store gift card can use it at multiple retailers within a shopping mall. In the case of Cadillac Fairview, our gift cards can actually be used at all 28 of our retail shopping centres across Canada, giving consumers the freedom to spend their card at more than 4,000 stores. Single retail cards can only be used at a single retailer.

How does it work? Single retailer gift cards are operated by the issuing retailer. When the card is redeemed at the retailer, the costs of the program are covered from the profit margins on the sale of the actual goods or services. Multi-store gift cards, on the other hand, are issued on behalf of the mall owner through a company such as StoreFinancial to implement, process and provide program management services for the gift cards. At Cadillac Fairview, we do not earn a profit from the

operation of our multi-store gift cards. Rather, we offer it as a service to our retailers to attract customers who want the convenience and choice of a multi-store gift card, something very useful, especially this time of year.

The individual retailer located at a shopping mall is a participating merchant and has elected to accept the shopping mall gift card as a form of payment for the goods or services they sell. Some retailers also use their own single retail cards in addition.

Multi-store gift cards are sold to shopping centre customers directly at our mall guest service kiosks. The gift card recipient can use the card to purchase merchandise and services from participating stores and restaurants in the shopping centre. Gift cards can range in value anywhere from \$10 to \$500 or more, with an average purchase of \$70. As you can see by the sample card in your package that's circulating—if you haven't seen it yet, here it is—the Cadillac Fairview card appears exactly like a debit or credit card and uses a magnetic strip on the back.

Multi-store gift card programs operate through the use of a sponsor bank and must utilize a global payment network such as MasterCard or Visa. When the gift card is sold, the funds are loaded onto the gift card account and are held on deposit at the bank. When the gift card is redeemed with a retailer, the transactions are processed, settled and paid to the retailer by the bank in the same way as a debit or credit card transaction.

Now I'm going to touch on some of the additional services provided by multi-store gift cards. Multi-store gift cards have five unique features.

Unlike single store gift cards, the cardholder has the flexibility and choice to use this card at 4,000 stores.

Cardholders can return merchandise to the retailer with funds credited back to their account.

Also, account tracking is a feature. Cardholders can access their personal account information 24/7 over the Internet, through an automated phone inquiry, as well as through a 1-800 toll-free service line; in addition to that, daily automated updates of each individual gift card account and special security features that protect and replace a customer's lost, stolen or damaged gift card.

On the issue of disclosure, Cadillac believes in full disclosure of all fees and conditions up front. It's important to clarify that the Cadillac Fairview Shop! card does not have an expiry date. Secondly, we are strongly opposed to the idea of any hidden fees or terms. As you can see in the packages that were distributed earlier, all the costs of purchasing a multi-store gift card are fully disclosed in clear, easy-to-understand language at the time of purchase and on the gift card itself. To ensure full disclosure at all Cadillac Fairview properties, the terms of the gift card purchase are actually outlined in six different places: (1) verbally at the point of purchase with a guest service person; (2) signage showing our policies at every guest service kiosk; (3) policies are clearly printed on the purchase receipt; (4) policies are clearly printed on the cardholder packaging; (5) our policy of charging a \$2 maintenance fee after 15 months is also

clearly printed on the back of the card; (6) terms and conditions are outlined on Cadillac's shop.ca website.

Our approach explains the growing popularity of this product and why 95% of these Shop! cards are completely used within the 15-month period before any kind of maintenance fee will ever come into effect.

It's important to note that for mall owners like Cadillac Fairview, multi-store gift card programs are not a business we run for profit. We offer multi-store gift cards because it's a valued service consumers want, with the goal of driving more traffic to our tenants, and ultimately loyalty to our malls. The operating and service costs associated with these gift cards are covered by the service fees themselves and the maintenance fees paid by the consumer.

Pertaining to service fees specifically, the multi-store gift card service fee is paid when the card is purchased and costs \$1.50. In some cases, multi-store gift cards are used by corporations for corporate gifts for their employees, and special incentives are provided that may waive that fee. For example, if someone is purchasing a \$20 gift card, you would pay \$21.50 at the time of purchase.

Maintenance fees: Unlike many single-store cards that expire after six or 12 months, we do not have an expiry date after which the card doesn't work. In the case of Cadillac Fairview's card, all the maintenance fees are waived until after 15 months, at which point the \$2 fee comes into place. The rationale here is that 15 months gives the cardholder two holiday season cycles to fully redeem the gift card. Our research shows that 15 months gives the vast majority—95%—sufficient time to use our card. You may ask, what is the remaining 5%? This often accounts for lost cards that are not reported or cards that have a small amount of money remaining that customers never fully use.

That ends my portion of the discussion. I will now pass the podium to Michael Miroslaw, president of StoreFinancial.

1700

Mr. Michael Miroslaw: Mr. Chairman and members of the committee, thanks for giving Heath and I the opportunity to present today.

At this time I'd like to provide the committee with some insight into recent regulatory activity pertaining to gift cards in the United States. StoreFinancial currently administers nearly 300 programs in the US, Puerto Rico, Canada and soon the United Kingdom. Since the year 2000, 24 states have enacted consumer legislation that specifically addresses gift cards. Their focus has been on expiry dates and the assessment of fees.

To summarize how those 24 states break down:

On the fee side, six states, including New York and Texas, permit the assessment of fees for all gift cards if there is clear disclosure and/or 12 months have passed from a date designated in the statute; 13 states, including California, ban or regulate fees for single-store gift cards but exempt multi-store gift cards; and three states, including Illinois, allow fees for all cards if a group of

requirements are met but also exempt multi-store gift cards.

On expiry dates, eight states, including Texas, permit the use of expiry dates after a set period of time and if there has been proper disclosure to the consumer; four states, including California, ban expiry dates for single-store gift cards but exempt multi-store gift cards; eight states, including New Jersey, permit expiry dates after a designated period ranging from one to six years but exempt, again, certain multi-store gift cards; and two states, including Illinois, permit expiry dates if disclosure requirements are met but, again, also exempt multi-store gift cards.

With respect to those 24 states that I mentioned, since 2000 only two have enacted consumer-oriented gift card legislation that places an outright ban on fees or expiry dates on all gift cards. The laws in both states are currently being challenged in court with respect to multi-store gift cards issued by a federally regulated sponsor bank. In one case, a lower court has already ruled that the statutes of the state cannot be applied to such cards.

In August 2006, the Comptroller of the Currency issued a bulletin to its members to specifically address multi-store gift cards issued by national banking institutions. The bulletin requires full disclosure of service fees and expiry dates on the gift card.

To conclude, we appreciate the opportunity to appear before this committee to outline the significant differences between single-store retail gift cards and multi-store gift cards. The features and services provided to consumers are very different, the business models are very different and, accordingly, the way the two businesses are regulated should be different, as has been recognized in almost all US states that have enacted gift card legislation over the past several years. Consumers have continued to welcome our gift cards because they make gift giving easy and we provide full disclosure of all terms and fees. In fact, StoreFinancial currently administers nearly 300 programs throughout North America, including over 100 in Canada. Currently, we receive about one inquiry related to fees for every 10,000 cards we issue.

We look forward to working with the government—as Heath indicated, on Thursday we'll be at a session with the government here in Ontario—to ensure that consumers continue to get the benefit of multi-store gift cards.

At this time, Heath and I would be happy to answer any questions that the committee or the Chair may have.

The Chair: There are four seconds for questions. I'm sorry, time is now up. Thank you very much.

LAW SOCIETY OF UPPER CANADA

The Chair: The Law Society of Upper Canada. Would you state your name for Hansard.

Mr. Malcolm Heins: My name is Malcolm Heins. I'm chief executive officer of the Law Society of Upper Canada. I'm here this afternoon with Sheena Weir, our

government relations manager, and two counsel, Caterina Galati and Julia Bass.

The law society is generally supportive of Bill 152 and the Ontario government's initiatives to prevent mortgage fraud. The increase in crimes of this nature has taken advantage, I think, of a number of different phenomena, one of which is the ability to use technology to make the registry and land title system more efficient and, as well, I think changes in mortgage lending which have been predicated on efficiency of mortgage lending as opposed—perhaps in a manner that was used in the past—to validating who is doing the borrowing; what the property looks like; doing a valuation, an appraisal of the property; and having a survey done. All those things have more or less moved out of the current process that's utilized in mortgage lending.

We agree with the government's position that mortgage fraud cannot be solved by government action alone and that all parties involved in real estate transactions need to be part of the solution.

Let me just address some of the specific items that are contained in Bill 152; first of all, the changes to the Land Titles Act itself.

Section 15 of the act adds definitions of "fraudulent instrument" and "fraudulent person" to the act. We think that both of those definitions will be helpful in ensuring that fraudulent documents do not affect the register.

We also agree that the use of subsection 57(14) of the act, in conjunction with the two definitions I just referred to, will be very helpful in preventing further dealings in the property when problems are identified. In other words, when a problem is identified, the director has the power under 57(14) to put a caution on the title, do an investigation and then enter into a determination as to whose competing rights should prevail—and there doesn't necessarily have to be a loser, as I think you heard from Mr. McCarten. What you're dealing with are two competing interests: potentially the innocent owner of the property and either an innocent purchaser or an innocent mortgagee. Briefly put, the issue becomes, who has entitlement to the property itself and who has entitlement to the compensation?

Those determinations aren't necessarily straightforward. The act sets out, in our view, a reasonable approach to it, and also provides some flexibility through the section 57 process for there to be a determination in the more unusual circumstances as to whose rights should prevail to get the property and who should be getting compensation.

I talked a little bit about the problems in lending and the changes. We have appended to the presentation an article that appeared in the *Toronto Star* in early September involving a small property called 33 Earl Grey Road. The author of that article, Bob Aaron, points out, after doing a title search, that there were six transactions involving this property. When you look at that property, you see that there were four different financial institutions involved in lending on that property, and I think what it highlights is the lack of rigour that takes place in

lending. Here you have a property that's valued, over the times of these transactions, anywhere from the low \$100,000s to as much as over \$400,000. It just doesn't make sense when you look at the property. In fact, my secretary lives just down the street from the property. She said to me that she often wondered about this little property, which sort of sticks out like a sore thumb on the street. Even to her untrained eye, the fact that this property would have a value of over \$400,000 was patently ridiculous.

The situation is aggravated by the fact that the lender's position is often covered by insurance. The interesting thing is that insurance is paid for by the person who is taking out the mortgage. Whether it's CMHC or title insurance in these transactions, it's the consumer who pays and the lender who is getting the protection. So the incentives for the lenders in these cases are not as great as they might otherwise appear. Indeed, I also refer, at page 10 of my presentation, to the comments that were made by Mr. Justice Echlin in the case involving the Toronto Dominion Bank. As he stated, "In this instance the mortgagee cannot rely on the register because it did not even perform rudimentary due diligence and had notice of irregularities. For deferred indefeasibility to assist the bank, it must show that it is entitled to rely on the register in all circumstances." So we support the section 163.1 amendment that's in the act, which will allow the director to establish standards of due diligence in lending in order for lenders to be entitled to make a claim against the fund.

We also support the principle, set out in clause 59(1)(e), that subrogated claims not be compensable. We have pointed out to the minister that the section itself should probably be tightened up, as it's probably not specific enough to cover off all the kinds of claims that might be made against the fund by insurers.

1710

A couple of comments about the Land Registration Reform Act amendments:

We're not convinced that subsection 23(4)—that is the section that permits the director to notify an owner whenever a document is submitted by direct electronic transmission which would affect the property either by way of a transfer or a mortgage—is necessarily the best idea. It will probably mean that the consumer will be directed to purchase some kind of title insurance in order to facilitate the transaction. At the end of the day, if a fraudster is really determined to commit a fraud, that notice may not do what it's intended to do in those circumstances. What we think really needs to take place is to enforce the due diligence in the first instance, in the lending transaction.

There's a new power in section 23.1 of the act which entitles the director to suspend an electronic document submitter immediately in certain circumstances. We do have some concern that the discretion be administered judicially and that in some instances the person who is actually doing the electronic transaction may be quite innocent and it would be unfortunate if that person had

their authority to use the system pulled when they were also innocent. I think we've had some good discussions with the ministry as to how there might be a process put into place so as to avoid that kind of circumstance.

Just a couple of other comments.

Improvements to the land titles assurance fund: We believe that the fund must serve as a first rather than a last resort in certain instances. It should cover all reasonable losses and it should be administered such that it resolves cases within a reasonable time. I think it would also be useful such that some of the victims who are currently affected by title fraud have their claims moved through the system more readily.

Powers of attorney are an issue. The Substitute Decisions Act, while it has made it much easier for people to prepare powers of attorney, has had an unfortunate effect in that it's also very easy for fraudsters to use these powers of attorney to effect transfers of property. It's very difficult to follow up, because of the lack of rigor and formality around the preparation of these powers of attorney, to determine whether they're real or not. It would be our view that we need some substantial tightening and formalities around powers of attorney, particularly those that are going to be used to effect a property transfer or a mortgage of a property.

Finally, access to the registry system through the electronic system: Our information is that there are about 7,000 registered users who currently have access to the land titles system. We think it needs to be tightened up considerably. It would be our view that when it comes to effecting transfers, those should only be done by a government employee or a lawyer, someone whom the law society regulates. When it comes to putting mortgages on properties, it would be our view that those should only be registered by lawyers, a government official or a licensed financial institution.

Those are my submissions. I'd be happy to take any questions.

The Chair: Thank you. There is about one minute each for questions. Any government members?

Mr. Dhillon: According to your organization, how big a problem is real estate fraud?

Mr. Heins: It depends what you're talking about. If you're talking about what I call title theft, which is where someone actually has their property taken away from them, it appears to be running at the rate of somewhere between 10 and 15 cases a year. The problem with respect to mortgage fraud, value fraud, which is generally speaking fraud on financial institutions—but you have to be careful about that because it's the consumer who pays for the insurance that the financial institutions take out—it's much larger. Unfortunately, there are no central records, so it's been very difficult to get any accurate figure on it. Numbers have been thrown around of anywhere from \$10 million to \$60 million to \$75 million a year.

The Chair: Mr. Ouellette?

Mr. Ouellette: Two things. You mentioned a number of areas that should be tightened up. Did you bring any

written amendments that you would suggest on how the wording should take place? The second thing is, what would be the best prevention for title fraud for the average person, not knowing or not having access? What can they watch for? What sort of things can they do immediately to ensure that they're not hit?

Mr. Heins: I think the best thing that can be done by the average person is to have this bill passed. At one point it was being touted that people should go out and buy insurance. I don't really think people should have to be buying insurance to protect their own property.

Mr. Ouellette: I agree.

Mr. Heins: The other aspect to it is to enforce diligence in lending. That's really where the problem originates. The crooks are trying to get money, and if the crook is discovered early on in the process, they're not going to get the money and the consumer will not be defrauded.

The Chair: Ms. DiNovo.

Ms. DiNovo: I believe we're all in accord that something needs to be done. We heard from the Ontario Bar Association that although this bill is a step in the right direction, it lacks a great deal. How would you differ from the Ontario Bar Association in that assessment?

Mr. Heins: I read their presentation. Unfortunately, I was just reading it as they were giving it, so I'm not much ahead of you. But they made some suggestions with respect to tightening up the definitions a little bit of "fraudulent persons," "fraudulent transaction." That's all right. I don't have a great deal of disagreement with that. But as with all legislation, so much of the real guts of this legislation is by regulation. We've been having those discussions, but we actually haven't seen the regulations. That's why we can only say it's a step in the right direction. Until we see the regs, we don't know exactly how parts of it are going to work.

Ms. DiNovo: One of their concerns—not only their concerns, but the concerns of the authors of the Star article and others—is for third party protection, in this particular instance the protection of the real estate lawyer himself or herself. I'm just wondering how you feel about the protection of the real estate lawyer in the possible transaction as the bill now stands. Of course, we know we're going to go through clause-by-clause, we hope, and tighten this up, but any concern?

The Chair: We need a précis-type answer.

Mr. Heins: The protection of the real estate lawyer in part lies with us and some of the rules that we put in place. The lawyer, again, will be protected by a tightening of the lending process, and, as well, if they are able to operate in a market where they're able to do the due diligence that's required. One of the problems is that the transaction has been so dumbed down with a view to making it easy that the due diligence requirements that were formerly involved in the transaction have dissipated; they're gone. This legislation, I think, will assist in putting those due diligence requirements back in the act

or regulation, which will enable the lawyer to do the job for the consumer that needs to be done.

The Chair: I'm sorry; we're out of time. Thank you.

Mr. Heins: Thank you very much.

CANADIAN RESTAURANT AND FOODSERVICES ASSOCIATION

The Chair: The next presentation is from the Canadian Restaurant and Foodservices Association. I would ask that you state your name for Hansard.

Ms. Stephanie Jones: My name is Stephanie Jones. I'm the vice-president for Ontario of the Canadian Restaurant and Foodservices Association. My colleague Courtney Donovan is joining me today.

The CRFA is Canada's largest hospitality trade association, with 33,500 members across the country, including over 10,000 members here in Ontario. Ontario's \$19.5-billion foodservice industry represents 3.9% of the province's GDP and is also one of the province's largest private-sector employers, with 374,000 people on the payroll.

I appreciate the opportunity to appear before you today to present CRFA's thoughts on Bill 152. CRFA's accompanying submission has been forwarded to the clerk.

My comments are to the proposed changes to the Liquor Licence Act and the Consumer Protection Act as they relate to the new rules governing gift cards. They'll be limited to those two areas.

I'd like to start off by thanking the government for moving forward with changes to the Liquor Licence Act. CRFA is pleased to see that the government is willing to work with the hospitality industry to modernize Ontario's licensing and enforcement system. CRFA appreciated the opportunity to participate in the stakeholder consultations that took place on LLA reform, and our members were very pleased that many of CRFA's recommendations are reflected in Bill 152.

1720

However, CRFA does continue to have two concerns with the proposed changes to the LLA that I would like to raise with the committee today. The first is found in the proposed new section 6.1 of the LLA, which deals with inquiries and background checks during the licence application process. Under this new section, the registrar of the Alcohol and Gaming Commission will be given the ability to conduct more extensive investigations into an applicant's background and would be able to charge back the reasonable costs of these inquiries to these applicants.

I want to be clear that CRFA supports the government's decision to focus more of the AGCO's resources on problem licensees or those who are regularly in violation of the act. However, we are concerned that if this clause is passed as written, it will be open to abuse by inspectors, which could lead to unnecessarily lengthy investigations. In addition, the new section 6.1 has the potential to simply become a new revenue source for

government and could make the liquor licensing process prohibitively expensive for applicants.

Ontario's liquor licensees already pay some of the highest liquor licensing fees in the country. Licensing fees are in place to help cover the costs associated with processing a licence application and for the enforcement of the LLA. It is reasonable to ask licensees to provide additional information to help aid the AGCO in their background investigations. What is not reasonable is to allow the AGCO to make a decision to conduct a more thorough background review and then hand the applicant a bill for the associated costs.

In other Canadian jurisdictions, enforcement bodies take a different approach to gathering additional background information. For example, in the province of Manitoba, if additional information is required to fulfill a background check, the applicant is asked to provide these details and is responsible for covering all costs associated with obtaining this information. A similar practice is followed in Alberta.

Although there has been a commitment by Minister Phillips to consult with industry stakeholders on the development of risk criteria and the circumstances in which additional costs would be charged, the aim of the LLA review is to modernize and streamline Ontario's liquor licensing review, not create additional red tape or confusion. With this in mind, CRFA recommends that this section be struck from the bill and be replaced with wording that requires the applicant to provide prescribed background information to the AGCO, as is currently done in other Canadian jurisdictions.

CRFA's second concern is related to the penalty and enforcement provisions of the act. Specifically, CRFA is disappointed that the government did not take this opportunity to enhance the penalties and enforcement provisions associated with minors who use false identification to gain unlawful entry to licensed establishments. More modern technology has significantly increased the incidence of fraud and identity theft around the globe. These technological developments have also been taken advantage of by the creators and distributors of false ID in Ontario. Unfortunately, fake ID is becoming increasingly more difficult to detect, even under close scrutiny. Under the current law, the onus for ensuring that minors are not permitted to enter licensed premises unless they have reached the age of majority rests with the licensee. Hospitality operators take this responsibility seriously and go to great lengths to prevent illegal entry to their establishments. A move to ensure that responsibility is shared by the individual who is knowingly breaking the law is long overdue.

There are three ways CRFA has identified that the government can address this serious issue. First, the government should move swiftly to increase penalties for minors who use fake ID and obtain alcohol fraudulently through the use of fake ID. It is equally important that the penalties in place be applied liberally, and often, to send a clear message to deter individuals from violating the act. Second, the government should authorize retailers

and licensees to confiscate alleged false identification to be turned over to police. Finally, the government should take steps to introduce legislation to make it an offence to manufacture and distribute false identification to minors.

In addition to our concerns about the LLA amendments, CRFA looks forward to contributing to the discussion on the details surrounding the changes to the regulations on gift cards sold in Ontario. The industry does not object to the government's move to remove expiry dates from gift cards purchased by customers, but is looking for guidance on the accounting principles that would accompany such a change. In addition, ensuring that expiry dates are permitted where there is no cash transaction related to receiving a gift card is also critical. CRFA will be participating in the stakeholder consultation session scheduled for later this week on this issue.

Thank you for providing CRFA with the opportunity to present to you today. I'd be happy to answer any questions the committee might have.

The Chair: Thank you. There are two minutes per caucus. Mr. Ouellette.

Mr. Ouellette: Thanks for your presentation. I don't know if you were here for the Police Association of Ontario presentation, where I asked Mr. Miller, "What do you think an acceptable time frame for an extended investigation would be—an initial one and then a separate one—so that you can ensure that properly licensed individuals can move forward?"

Ms. Jones: We don't have a specific number of days, but we do want to work with the police association to set that out and we would look to other examples, maybe where there is a heavier regulatory investigation required. Right now, our industry doesn't have a specific position on that.

Mr. Ouellette: On the disorderly conduct question I asked as well, do you experience a lot of that within your industry, whereby one individual would come from one facility into another one and then possibly—would you expect, as you mentioned, the inspectors would use this to their advantage to shut down facilities?

Ms. Jones: I don't think I caught that question.

Mr. Ouellette: What takes place is, an individual would be asked to leave one facility and then they go to another one because they're adjacent properties. And before they even get into that one, there could be some altercation at the adjacent property, which would end up shutting down the wrong facility.

Ms. Jones: We are concerned about that, absolutely. But what we would hope is that the next property would have the proper security in place to prevent that person from entering.

The Chair: Ms. DiNovo?

Ms. DiNovo: Stephanie, thank you for your presentation—both of you. Do you think this is a cash grab by the government, this particular clause, just honestly? I am aware of a government that—you know, we're short of inspectors, we're short of policing, and all of a sudden we're looking at this particular part of Bill 152. Is that what your members are frightened of?

Ms. Jones: That's absolutely what we're concerned about, but we do endorse the idea of focusing resources on what would be considered problem licensees. We have no problem with focusing resources in that direction, but how we would like to see this cleared up is through very clear language on when additional investigations would be necessary, under what circumstances, and then also that those people not just be handed a bill on behalf of the government, but that they have the opportunity to go out and provide the information, whatever the information is, through service providers of their own choosing. That way, they can pay the bills accordingly.

Ms. DiNovo: And what would your members be able to live with in terms of the gift card issue?

Ms. Jones: What we want, first of all, are clearer accounting practices, certainly over a set number of years; for example, when do certain things expire? Second, as ORHMA clearly spelled out, we need to know that if gift cards or discounts are being given as part of a promotional activity or, say, a charitable donation, they can be treated differently under the regulations.

The Chair: Thank you. Ms. Matthews?

Ms. Matthews: I wonder if you could tell us if any members of your organization have raised the issue of licensing the whole establishment, including washrooms.

Ms. Jones: They've raised the issue in that they certainly want the choice to be able to do that. It's not going to be a universal change that will happen to every licensee, but certainly they have raised it over time, whether it be washrooms or adjacent areas; for example, a hotel that has a lobby outside the restaurant, and things like that.

Ms. Matthews: So you would generally support that part of the bill.

Ms. Jones: Yes, we do.

Ms. Matthews: Thank you.

The Chair: Good. Thank you very much.

ONTARIO CATHOLIC CEMETERY CONFERENCE

The Chair: Next we have the Ontario Catholic Cemetery Conference. If you would state your name for Hansard.

Mr. John O'Brien: Good afternoon. My name is John O'Brien, and I'm the president of the Ontario Catholic Cemetery Conference. Mr. Chair and members of the committee, on behalf of the 14 Roman Catholic dioceses in Ontario I wish to express my thanks and appreciation to the members of the committee for the opportunity to speak in support of schedule D of Bill 152 respecting amendments to the Funeral, Burial and Cremation Services Act.

The Ontario Catholic Cemetery Conference has been in existence since 1985, and has been an active participant in the legislative and regulatory process under way since that time, representing the interests of the 14 Roman Catholic bishops and their respective Catholic

communities in all matters relating to the ministry, operation and administration of Catholic cemeteries in the province, of which there are over 500.

The Catholic cemetery ministry is an important part of the faith practice of a Catholic. The Catholic cemetery is a sacred place, a visible and tangible link between the community of the living and the deceased, those who have died in the hope of everlasting life. For 2,000 years, the Catholic cemetery has been a place of prayer and reflection for those who come to honour their deceased family and friends, and the lives they've lived. In Ontario, our history can be traced to the 17th century. The Martyrs' Shrine in Midland still today attracts pilgrims by the thousands.

1730

The OCCC is grateful to have been part of the Bereavement Sector Advisory Committee throughout these last number of years, and we wish to thank the many ministry staff, especially Rob Dowler, assistant deputy minister, who was tasked with bringing this new legislation forward.

The new legislation is not perfect, but it reflects the consensus reached through the BSAC process, which gave participants the opportunity to express their views and opinions. There are always aspects of legislation that, depending on one's perspective or bias, may seem to be difficult or even unworkable, but rarely does the impact feared materialize in the way imagined. I believe this to be true of this legislation. I understand that concerns were raised last week about the impact of allowing a payment in lieu of property tax to be made to a cemeteries care and maintenance fund rather than a tax payment made directly to a municipality when a religious, municipal or not-for-profit cemetery chooses to engage in commercial activities, such as the building of a funeral home or a cremation facility built after January 1, 2002, or wishes to sell monuments or memorials.

Let me explain to you how the payment in lieu of taxes would work in a diocesan cemetery operation such as the Diocese of Hamilton. In addition to 10 diocesan cemeteries, there are approximately 38 small parish cemeteries in the diocese, scattered in a geographical area extending from Hamilton north to Tobermory. The great majority of these cemeteries are attached to a parish church and are about an acre or two in size. They were established in the later 1800s; indeed, the Diocese of Hamilton this year celebrates its 150th anniversary as a diocese. Many graves in these cemeteries were sold and they were filled before perpetual care, as it was then known, became mandated by the province in 1955. The cemeteries relied, as many still do today, on the generosity of spirit of volunteers to maintain the graves of their loved ones. As a result, their care and maintenance funds are today deficient, and they cannot produce enough income to maintain a satisfactory level of care, let alone a level of care that reflects the faith of the people interred therein.

This legislation would allow for a payment on our cremation facility in Brantford, Ontario, to be made to

the care fund of St. Paul Mission cemetery in Dornoch, Bruce County, as an example. Hopefully, over time, all of our 38 parish cemeteries, through these payments in lieu of taxes, would be able to generate enough income to hire a summer student to cut the grass once a week, or accumulate enough income to repair dilapidated monuments. This provision is a sensible one, in view of the thousands of small cemeteries that cannot afford a decent level of care. Remember that the cemetery operator cannot access care and maintenance funds, and may only spend the income in a prescribed manner, subject to audit. In addition, religious and not-for-profit cemeteries are places of passive recreation, often in the middle of urban communities, which are maintained at no cost to the taxpayer. Mount Hope in Toronto, and Holy Sepulchre cemetery in Burlington are two such places that come to mind.

Catholic cemeteries do not compete in the open marketplace; our mandate, our *raison d'être*, is to serve Catholic families under the direction of our respective bishops. Yet this legislation states that we should make a payment in lieu of tax to our care funds should we wish to open a funeral establishment or build a cremation facility to serve our own people. While we believe there is a certain unfairness about this, we have accepted it. Accordingly, we do not believe the late proposals to fundamentally amend the BSAC consensus should be considered.

I would like to raise the following additional points:

The Ontario Catholic Cemetery Conference would like to ensure that the educational requirements, while very important, do not unfairly burden many elderly parish employees who have been meeting and serving families for decades. We encourage simplicity in the application of this new legislation for these smaller rural locations that often conduct less than 10 interments per year.

We also suggest that the delegated administrative authority contemplated in the legislation be dropped in favour of the retention of the existing registrar and cemeteries branch. The Ontario Catholic Cemetery Conference and its members have enjoyed the service and direct relationship that has developed over the last 50 years. It is worth keeping.

In closing, there are many good elements to this legislative package. There are other requirements that are a little more difficult to digest, but it does strike a balance.

Thank you for the opportunity of making our views known. I'd be happy to answer any questions.

The Chair: Thank you. Just over two minutes for each caucus. Ms. DiNovo.

Ms. DiNovo: Thank you, Mr. O'Brien, for your submission. You're aware that Open Dialogue and the funeral directors of Ontario have a serious problem with this provision, and one of their problems is the unequal playing field, as they would define it. Part of their concern about that unequal playing field is that you have a Catholic cemetery—hey, I'm from United Church myself—that is essentially doing an incursion into the

funeral direction business here, or possibly could, providing full-scale funerals on a cemetery and not being subject to the same provisions that a Turner and Porter, say, might be. Now, I understand that you're dealing with Catholic families and a particular part of the marketplace. Their argument, of course, would be that so are they. What would you answer to that?

Mr. O'Brien: I would answer that the payment that's being made, whether it's to the municipality or to our own care funds, is exactly the same amount. It's money that we cannot access, so there isn't going to be a benefit that's going to come back to us the same way that is being suggested.

The Chair: Thank you. Government?

Mr. Dhillon: Thank you for your presentation. How would the proposed amendments benefit your members and the broader bereavement sector?

Mr. O'Brien: Specifically in what context? To which amendments are you referring?

Mr. Dhillon: You will be forced to pay that portion into your care and maintenance fund. How would that benefit—

Mr. O'Brien: Well, in the example that I gave, what it would allow is that—a number of our smaller cemeteries are scattered throughout the diocese. Because they are so old, they never developed a care fund. The parishes in those days never set aside funds for the future care of the cemetery, and as a result, they've been maintained by volunteers, and there's an insufficient level of income.

Under the current Cemeteries Act, if a cemetery is declared abandoned, it becomes the responsibility of the municipality, and it becomes the responsibility, in essence, of the taxpayer. Allowing it to be paid into our own care fund, especially for those smaller, deficient cemeteries, would allow their funds to increase to the point where they can start supplying a sufficient level of income to maintain their grounds, again, to allow somebody, a student, to come in once a week during the summer and cut the grass. That's the whole point. There are thousands of cemeteries in this province, and the vast majority of them have deficient care funds. These contributions in lieu of property tax would allow us to raise the care funds and produce the income to maintain those cemeteries without declaring them abandoned and handing them off to the taxpayer at the end of the day.

The Chair: Mr. Ouellette.

Mr. Ouellette: In your presentation, you have a couple of comments I want to question you on. Specifically, you state, "In view of the thousands of small cemeteries that cannot afford a decent level of care." You also mention that the Catholic cemeteries do not compete in this open marketplace. Potentially, though, could this not open up the marketplace for you, for those other ones that are large?

Mr. O'Brien: The vast majority of the cemeteries that we're talking about are in rural Ontario.

Mr. Ouellette: Yes, but I'm more referring to the larger ones, such as the one located in Whitby and those

ones that may be in the marketplace after this comes online. If that is the case, would you be opposed to having it taxed and then being able to draw from the tax fund to support those specific sites that are in need?

Mr. O'Brien: We went through a difficult process in BSAC. It was four or five years in the making. We all brought issues to the table and submitted the best way we thought we could deal with those issues. That is why we believed, through the BSAC process, that a consensus had been reached around allowing religious, municipal and not-for-profit cemeteries—again, we're not out there. We're looking at Catholic families only. Those are our constituents here, so we're not out going after all of these other groups and we're not competing. Our market, in essence, is self-limiting. We're not out there in the general community advertising to people of other denominations to come avail themselves of our services. In fact, we can't do that. So we thought, in view of our situation, in view of the number of Catholic cemeteries in the province that are deficient, that this would be a reasonable compromise.

The Chair: Thank you. We're out of time.

1740

RETAIL COUNCIL OF CANADA

The Chair: The next presentation is the Retail Council of Canada—which stole my first executive assistant, but I'm not bitter.

If you would state your name, please, for Hansard.

Ms. Ashley McClinton: Thank you, Mr. Chair. My name is Ashley McClinton and I'm the director of government relations Ontario for the Retail Council of Canada.

Thanks again for the opportunity to appear before you today. I'll try to keep my remarks somewhat brief, or move through them quickly, at least, so we do have some opportunity for questions at the end.

As most of you know, the Retail Council of Canada has been the voice of retail since 1963. Like most associations, we're funded by our members' dues. Our association represents all retail formats: department, specialty, discount and independent stores, and online merchants. While we do represent the large mass merchandise retailers, the vast majority of our membership is in fact small ma-and-pa shops. And 40% of our members are right here in Ontario.

I want to speak briefly about the contribution of the industry. I would note that it's the province's second-largest employer, with more than three quarters of a million employees in the province. It's actually a little-known fact, but in terms of employees, we rank right behind manufacturing, and in terms of scale, retail is well ahead of health care, the tourism industry and others. So it's just a huge industry in terms of employment. In addition, the industry had more than \$135 billion in sales last year and has over 85,000 storefronts in the province.

The committee has a very large omnibus bill before it today. I'm going to focus my comments on one area, and

that's the provisions respecting gift cards. I know that several presenters have touched upon the issue briefly, but I do want to go into a little bit more detail in the time allotted to me today.

I want to begin my comments by commending the minister, his staff and the dedicated public servants at the Ministry of Government Services consumer protection services division for their transparency and their readiness to consult with the retail industry and other stakeholders before proceeding with rules that are going to have a large financial administrative impact on our sector.

From the beginning, retailers expressed their commitment towards working with the government to create these rules. We were extensively involved in the consultations conducted by the minister in the months leading up to the introduction of the act. At that time, we indicated our willingness to create rules that are going to respond to the needs of consumers as well as the legitimate concerns of retailers. Our position hasn't changed since then.

I want to state at the outset that we're really pleased as a result of our discussions that although this is something that won't be developed until the regulations, the minister has stated that it's his intent to focus the gift card regulations only on gift cards purchased by consumers. This is an absolutely critical issue for us, and I'll tell you why. It's important to understand that, despite the name, gift cards are not something that are solely given as a gift and received by consumers. Retailers give gift cards away for a myriad of reasons: for promotions, for customer service purposes, for employee benefits and rewards. Some retailers donate gift cards to charity or give them away as prizes to be auctioned off. So they're used for a variety of marketing and reward initiatives. We applaud the government for recognizing the real benefits to consumers that they can present, and we want to work with them so that retailers aren't discouraged from offering them in these innovative ways.

As the committee knows, gift cards are extremely popular. A StatsCan report that studied gift cards during the 2003 holiday season found that 53% of large retailers were offering them at that time. A report released by StatsCan just this morning entitled *Gift Cards: The Gift of Choice* reported that only two years later, over 80% of large retailers were offering them. That's a 29-percentage-point increase in just two years. So while large retailers certainly have the resources to support the introduction, promotion and administration of gift cards, I can say anecdotally that we're seeing a lot more small and mid-sized retailers offering them as well. This combination of security, convenience and choice that they offer to the consumer continues to drive their sales.

While they're extremely popular, I want to note that they're still a relatively new and developing phenomenon, at least in the Canadian marketplace, and because of that, there is a lack of consensus in Canada with respect to how they should be administered.

One area in which there's a great diversity of practice, of course, is with respect to expiry dates, so I wanted to

just take a moment and explain why some retailers who do that choose to do so.

One reason is accounting. Specifically, they must show a gift card as a liability on their balance sheet until the card is redeemed, and expiry dates are a means of clearing that liability for cards that haven't been used for an extended period of time. CRFA, before me, touched on that issue. We have been in touch with the accounting industry and put them in touch with the ministry, so we're looking at resolving that issue and coming up with some best practices.

Also, managing gift cards becomes more complex and costly over time. The older the gift card is, the more difficult it becomes for retailers to track the validity of the card and how much value it has stored on it. Again, it's consumer demand that has driven the popularity of these cards, and for retailers, the needs of consumers are always going to work out. We recognize that consumers have some concerns about the expiry dates on gift cards, and that's why we're working with the ministry to eliminate expiry dates on cards that are purchased by consumers.

For most consumers, most people—I know myself—they burn a hole in my pocket, but we recognize that other people hold onto them for a longer period of time. Most people redeem them very shortly. There's only a very, very small percentage that go past two years, which is the most common expiry date, and in those cases we think it's fair that consumers are still able to redeem them at their leisure, and we're prepared to eliminate those.

Another area in which there is a great diversity of practice is service fees, so I want to just spend a minute explaining why retailers who do levy service fees choose to do so.

Essentially, it's to recoup some of the costs associated with them. Depending on the type of card issued, how many cards are ordered, the type of technology employed and the services offered, the cost of gift card production and implementation can be very significant, so some retailers charge fees which are similar to fees charged by financial institutions for dormant bank accounts in order to recognize the continuing cost of maintaining the balance of a card that hasn't been used for a long time. If a retailer engages a third party to manage their program, which most do, there's a charge for maintaining each gift card account. These costs are ongoing whether or not the card is used, and they continue in perpetuity in cases where the cards don't expire. So sometimes the cost of maintaining a gift card account can exceed the value that remains on the card. We recognize that some consumers have concerns about these fees, and that's why we're working with the government to eliminate them or to create rules that are fair.

I want to just briefly distinguish between these service fees as just described and service fees that are charged for services such as customization, which can include personalizing gift cards with photographs, which is an increasingly popular value-added product. We want to make sure that the regulations developed by the ministry

do not prohibit customers from benefiting from these types of services.

With respect to disclosure rules, which is the third area being proposed for regulation, again, we're pleased to work with the government to create rules regarding what information is communicated to consumers and how it's disclosed. Most retailers convey all the relevant terms and conditions to consumers directly on the card, but due to the abundance of information that has to be communicated, it's sometimes a challenge to fit it all on the card itself. So in addition to information regarding expiry dates and service fees, if they apply, many stores include information on where the card can be used and for what purpose, how to access the retailer's customer service personnel and what the customer should do if the card is lost or stolen. Other companies include bar codes and foreign currency conversions, in the case of global companies. These space considerations are exacerbated by the fact that all these terms and conditions are conveyed in both official languages. So in cases where space doesn't permit all the terms to be communicated directly on the card, some retailers disclose the terms on the accompanying sleeve or on the sales receipt with the gift card.

But we know that some consumers have expressed concern that they're not always aware of the terms associated with the gift card that they bought, and that's fair. We want to work with the government to create rules so there is some level of standards and consistency, which we think will be helpful for both retailers and consumers.

Finally, I just want to speak to the concern raised by some that the new rules won't be in place for the upcoming holiday season when the bulk of the gift cards are going to be sold and exchanged. Gift cards are an extremely complicated issue, and we want to commend the minister for taking the time to get it right. By working together on the regs, we can ensure that retailers are equipped to implement them without any disruption in service to either the consumer or the business. In the meantime, we want to make sure that consumers are educated about their gift card purchases, and that's why we're going to be developing and distributing tips for Christmas, for this holiday season. Like the minister, we believe that smart consumers are good for business.

Thank you for your time, Mr. Chair. I'm happy to take any questions, should committee members have them.

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The Chair: Thank you. We have one minute for each party. Mr. Dhillon.

Mr. Dhillon: Thank you very much for your presentation. Would you agree that these amendments achieve greater fairness?

Ms. McClinton: In the end, we hope that they're going to create great balance: fairness for consumers and workable rules for retailers. I think the details will be in the regulations, but certainly in principle we're happy to work with the government to create these amendments.

The Chair: Mr. Ouellette.

Mr. Ouellette: Thank you for your presentation. One quick question. What happens with the 5% of the remaining gift cards that are never cashed in, that are lost? You spoke about the accounting of them and those sorts of things. What happens with that 5%?

Ms. McClinton: What happens from the retailer's perspective? Typically they're closed off at some point, and it will depend. Again, there's an inconsistency with respect to their administration, but if they're not redeemed, they're not redeemed.

Mr. Ouellette: No, but you mentioned the accounting for them, and you had difficulties in explaining the maintenance fees and the expiration dates and those sorts of things. So here you have 5% of funds that are going somewhere, that are never being redeemed.

Ms. McClinton: In the case of cards that don't have expiry dates or that do have expiry dates?

Mr. Ouellette: That do have expiry dates.

Ms. McClinton: That do have expiry dates. Well, they would expire as of their expiry date, whether or not they were redeemed.

Mr. Ouellette: So the companies maintain the 5%?

Ms. McClinton: The company or the third party. It depends on how they're administered. Sometimes the third party holds the account until they are redeemed, and that's one of the other issues. Retailers aren't necessarily making all the money off these. They don't necessarily take it into account until it is redeemed.

The Chair: Ms. DiNovo?

Ms. DiNovo: First of all, I just want to give the nod to Mr. Kormos, whose formidable visage is on the screen behind you. He's the one who came up with this idea about gift cards.

But just a question, and thank you for your presentation. It becomes difficult, as you say, to track the validity of the gift card and the value it has stored over time. Now, I understand the necessity for a processing fee; that makes sense to me. But I don't understand why it becomes difficult over time to track the validity. If it's processed, if the card is manufactured well so that you know it pertains to the store that it's supposed to be used in, why can't it be used over time? What's the problem?

Ms. McClinton: Sure. It's just that some of our members today get paper gift certificates that were issued in the 1980s, and it's the same reason—technology changes, point-of-sale systems change, the expectation of the marketplace changes, and as these things change but the product becomes stagnant, it's very difficult to verify whether or not there's any validity to them. Also, there are fraud concerns, and as people become more sophisticated in how they replicate these cards, it can be more difficult to track whether or not it was issued by the retailer itself.

Ms. DiNovo: But this is like money itself. I mean, money over time has less value, so the gift card over time would have less value, one would think. You know, we have different ways of manufacturing money or counterfeiting, but at the same time, we recognize money. If it's \$5 in 1980, it's \$5 today. It buys less; so would the gift

card. But I don't understand the difference between the \$5 bill and the gift card, if it's produced with some degree of care—and that's a processing fee, one would imagine. So, again, just a question.

The Chair: That has become a statement rather than a question. We're out of time. Thank you.

Ms. McClinton: Thank you very much.

CANADIAN INSTITUTE OF MORTGAGE BROKERS AND LENDERS

The Chair: The Canadian Institute of Mortgage Brokers and Lenders. If you would state your name for Hansard.

Mr. Jim Murphy: Good afternoon, Mr. Chairman and members of the committee. I think I'm the second-last spokesperson before the committee, so I'll try to make it brief and address the key points.

My name is Jim Murphy, and I am the senior director of government relations and communications for the Canadian Institute of Mortgage Brokers and Lenders; CIMBL is our acronym. CIMBL has over 9,600 members across the country, with approximately 60% of our membership here in Ontario, about 5,500. CIMBL, I think it's important to note, represents all facets of the mortgage industry, including lenders such as the banks and credit unions; mortgage insurers that are currently practising, CMHC and Genworth, along with the new entrants to the marketplace; title insurers; as well as mortgage brokers and agents.

Research that CIMBL has recently undertaken, copies of which you have as part of the handout, shows that by the end of 2006 there will be over \$700 billion—\$730 billion to be exact—in outstanding mortgage credit in Canada, of which roughly half is here in Ontario. This total is expected to grow by a further 10% in 2007. Our industry helps Canadians and Ontarians meet their dream of home ownership.

I think it's important to note for the benefit of the committee that CIMBL has also established an accredited mortgage professional, or AMP, designation as part of our ongoing efforts to increase the level of professionalism in Canada's mortgage industry through the development of educational and mortgage standards. The AMP designation sets a single, and is in fact the only, national standard for Canada's mortgage professionals across the country. To date, over 3,000 of our members have this designation and it's growing. The designation is based on a proficient understanding of the mortgage industry, a history of two years in the industry, along with a commitment to continuing education on an annual basis.

There has been much attention paid to the subject of real estate fraud, and you've heard that in terms of the deputations before the committee. The media has reported on several cases in which innocent homeowners have become the victims of mortgage fraudsters. Bill 152 proposes legislative changes that will benefit innocent victims of fraud. Before commenting on these changes,

we wish to note the measures that CIMBL has taken to combat real estate fraud in the marketplace.

First, CIMBL has produced a paper on fraud avoidance standards in the mortgage industry. This paper has been updated and has been forwarded to all of our members across the country. It's important to note that real estate fraud, unfortunately, is not just an issue in the province of Ontario but is an issue in other provinces across the country. This paper educates members by telling them what to watch for when completing a mortgage application and suggests measures to follow that will reduce the amount of real estate fraud.

Secondly, at our regional symposiums that we hold across the country, including here in Ontario, CIMBL provides a seminar session where we provide an update to our members on real estate fraud and where we have experts make presentations. These sessions include examples of the types of fraud and what mortgage professionals can do to avoid or ameliorate the number of occurrences.

Thirdly, we recently updated our website, providing an overview, under the consumer section on our website, on helpful tips for homeowners and prospective homebuyers about what to look for and questions to ask in order to avoid real estate fraud.

Fourthly, we are an active participant with Teranet, which is the land registry system here in Ontario, on the REDX system that Teranet created, which aims to combat real estate fraud. As a subscriber to REDX—it can be a lender, insurers, others—background checks on professionals or firms are undertaken and periodic reviews of real estate or mortgage professionals can be undertaken to contain inconsistent information. That's available to subscribers of the system and one that we support.

Lastly, we've also strengthened our own ethics bylaws by, for example, creating the position of a CIMBL investigator, in addition to our ability to publish the names of those who may violate our code of ethics.

Due to its complexity and sophistication, real estate fraud has many victims. Innocent homeowners, third-party purchasers, lenders and insurers are all impacted by this crime.

CIMBL welcomes the fact that the government has and continues to consult with stakeholders on this important issue through the Ministry of Government Services. The legislation before you is one that CIMBL supports, although there are still outstanding issues that have yet to be finalized and that I will address in a moment. These are being left to either regulation or various orders or guidelines that will be developed by the Ministry of Government Services.

Basically, the notion set out in Bill 152 is that mortgages obtained by fraudulent means have no standing. This is one we support. This change will benefit innocent homeowners across the province. Victims of real estate fraud should not have to be the ones to track down the fraudsters.

Bill 152 also increases penalties for real estate fraud and, again, this is a measure we strongly support. CIMBL

has recommended that in fact the government go further and apply additional resources to fighting fraud, including dedicated counsel.

Unfortunately, the subject of real estate fraud is complex and has other aspects that also need to be addressed, as I mentioned earlier. Two outstanding issues that the government is currently examining, and which CIMBL has a stated interest in, are access to the land titles assurance fund, the LTAF, and access to the land registry system I referred to earlier, commonly referred to as Teranet. I've included in our package a recent letter we forwarded to the Minister of Government Services that addresses these two important issues.

On the subject of access to the LTAF, CIMBL welcomes the fact that lenders will continue to have access to this fund through aggrieved innocent registered owners or purchasers. CIMBL believes that there should be due diligence standards associated with access to the LTAF, similar to other comments that you've heard earlier today, and looks forward to continuing to work together with the government to finalize these standards. We're in ongoing discussions. There is a round table that the Ministry of Government Services has established, and we've been inputting to that. We haven't seen the final standards at this point. We hope to see that before they are finalized and implemented.

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CIMBL has also taken the view that LTAF processes should be as transparent and efficient as possible. The government has made suggestions that will expedite the process considerably in some of our discussions, and we support those. CIMBL still believes, however, that government officials should not be judge and jury; that is, to collect the data for cases that access the fund and then also to make the ultimate decision in terms of the award. We believe that adjudication should rest with either a quasi-judicial body or some form of independent third party.

In terms of access to the land registry system itself, our position has always been that this issue should be based on standards and not on title, and by "title," I mean a profession. We support enhanced standards for access to the land registry system—guidelines, whatever that might be, security features—that would raise the overall bar in terms of accessing the land titles system to maintain the integrity of it. We do not support limiting access based on title alone.

Thank you for your time. I would be pleased to answer any questions you may have.

The Chair: Thank you. We have just over one minute each, starting with Mr. Ouellette.

Mr. Ouellette: Thank you for your presentation. Earlier on, we had presentations from two organizations, the Law Society of Upper Canada as well as the Ontario Bar Association, where they suggested that there should be a greater onus on the initial lending organizations when checking out fraud. How do you respond to that?

Mr. Murphy: I think one of the things about real estate fraud is that there are so many parties involved in a

transaction, not only a mortgage broker or a lender, but there's an insurer, there are appraisers, there are lawyers, there are real estate brokers and agents. You have six or more different professions that are involved in a real estate transaction. It's a very large process. I don't know if there are many other processes that have so many professions. We all have a role to play in that. We all have a role to follow guidelines, to follow due diligence, which is why we developed guidelines for our members and why we provide seminars at our symposiums across the country to update them on things. Everybody has a role to play in that.

There are, unfortunately, examples of real estate fraud where people will come to a meeting to do an application for a mortgage and just misrepresent themselves. It's not as if you're not meeting with them. The crime is so sophisticated that they may present a driver's licence or other identification that is done so well, how is someone to know whether that is or isn't that person?

We certainly support due diligence. We certainly support the need to provide that information. Currently in the province of Ontario it's the fiduciary responsibility of the lawyers also to do that, when signing off on a real estate transaction. That's their responsibility at the end, but everybody does have a role to play in that.

Mr. Ouellette: The expectation was to have a provision in the future that it says "with an exemption in the event of fraud" in any future transactions as a result of this legislation. Would you expect the same as well?

Mr. Murphy: In the event of, when you say—

Mr. Ouellette: That the lawyers will exclude themselves because a provision will state that the lawyers will be exempt in the event of fraud.

Mr. Murphy: Well, I'm sure there are lots of others who would like to have that in place also. That's currently what their role is, fiduciary. Not to be provocative, but there are over 100 lawyers under investigation by the law society currently for real estate fraud in the province of Ontario. We all have a role to play in making sure that our process is an ethical one that works properly, and just absenting one from that process, I don't think, is going to solve it.

The Chair: Ms. DiNovo.

Ms. DiNovo: In another conversation, I would be very interested in what you would have to say about the Mortgage Brokers Act, which is also before this government. It seems to me to be blatantly unfair in dealing with your industry. It doesn't ask the same thing of lawyers, as you just pointed out, or of employees of lending institutions. But that's another conversation for another day.

I do hope your members have errors and omissions insurance, because I'm concerned, as I was with the Ontario Bar Association and the lawyers represented here, that there are some third-party problems here in this act. Hopefully this can be fought out clause by clause, but I'm just wondering about that.

Mr. Murphy: Actually, speaking of Bill 65, which is the new mortgage brokers and lenders act, it will make E

and O insurance mandatory for our members to be licensed in Ontario, which we strongly support.

The Chair: Thank you. Any questions from government?

Mr. Dhillon: No questions, Chair.

The Chair: Thank you.

CONSUMERS COUNCIL OF CANADA

The Chair: As they say, last but not least, we have the Consumers Council of Canada. If you would state your names for Hansard, please.

Mr. Bill Huzar: My name is Bill Huzar. I'm the president of the Consumers Council of Canada, and joining me is my colleague, my associate, my partner, and past president and a founding member of the Consumers Council of Canada.

Mr. Ramal: Your wife.

Mr. Huzar: Yes.

The Chair: I had guessed daughter.

Mr. Huzar: We appreciate that. Thank you.

The Consumers Council of Canada is an independent non-profit consumer organization whose vision is an effective, equitable and efficient marketplace for consumers. The council works collaboratively with consumers, business and government in support of consumers' rights and responsibilities to provide a consumer perspective and to find solutions to marketplace problems. Through consumer representation, research, education and service, the council addresses issues that affect and influence the daily lives of consumers both nationally and in the province of Ontario.

The Consumers Council of Canada commends the Ontario government for taking action to amend various acts to improve consumer protection. In general, the Consumers Council of Canada supports the proposed amendments. The following represent specific aspects of Bill 152 upon which we wish to make specific comment.

The first has to do with Internet gaming. The Consumers Council of Canada supports the amendment to the Consumer Protection Act, 2002, new section 13.1 of the act, which prohibits the advertising of Internet gaming sites. We believe that this is in the best interests of consumers, particularly vulnerable youth, at which the advertising is often targeted.

Gift cards: The Consumers Council of Canada supports the amendment to the Consumer Protection Act, 2002, which allows for regulation of future performance agreements, including gift card agreements. The Consumers Council of Canada believes that it is not reasonable that a consumer's purchase of a gift card should be restricted in its time use. The retailer has already received payment for the goods or services and should have no right to refuse the consumer access to the goods or services already purchased.

Consumer identity files: The Consumers Council of Canada supports the addition to the Consumer Reporting Act which allows a consumer to request an alert to be placed on their file held by consumer reporting agencies.

This alert warns the consumer reporting agency to verify the identity of any person purporting to be that consumer.

The Consumers Council of Canada is aware of the fact that the Personal Investigations Amendment Act (Identity Theft) in Manitoba goes further to protect consumers than does Bill 152, and I'll point out specific parts of it which the committee might consider.

—The Manitoba legislation requires the establishment of a 24-hour toll-free number to request a security alert. This provides easy access to consumer protection against identity theft. Incidentally, this is something that has existed in the United States for decades.

—It also stipulates that there should be no fee for placing such an alert. Consumer protection should not be a fee-based cost to consumers.

—It also sets penalties for contraventions of the provisions of the act.

—The Manitoba legislation requires the recording of steps taken by the reporting agency and by the person who received the alert. This is a safeguard for consumers and business and protects each from potential redress difficulties.

I point these things out and I have attached a copy of the Manitoba legislation to our presentation for your consideration.

Powers of search and seizure: The Consumers Council of Canada supports the amendments to the Electricity Act, 1998, which under the new sections clarify the powers of inspectors and investigators with respect to search and seizures. This gives consumers additional protection in the recall of defective electrical products. This, a first for Canada, removes the dependency of consumers on the goodwill of manufacturers to recall defective electrical products.

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Registration and transfer of land title: The Consumers Council of Canada commends the Ontario government for taking action to protect consumers against land title fraud. The proposed amendments to the Land Registration Reform Act and the Land Titles Act go a long way to make land title fraud more difficult in Ontario. The streamlining of the land titles assurance fund is an important consumer action ensuring victims of land title fraud timely compensation.

Storage fees: The Consumers Council of Canada supports the amendment to the Repair and Storage Liens Act, which protects consumers from excessive charges with respect to an article subject to a non-possessory lien.

And finally but not least, the bereavement sector: The Consumers Council of Canada supports the amendments to the Funeral, Burial and Cremation Services Act, 2002, and the Funeral Directors and Establishments Act as found in schedule D: Amendments to Bereavement Related Statutes. The Consumers Council of Canada has been an active member of the Bereavement Sector Advisory Committee (BSAC) since its inception in 1999. As an aside, we anxiously await the final sections of the regulations so that we can have a full proclamation of the act. We fully support the amendments to the act, which will bring closer the full implementation of the Funeral,

Burial and Cremation Services Act, 2002, and its regulations.

The Consumers Council of Canada is aware of the fact that certain members of BSAC have not abided by the agreement—and I don't want to use the term "gentlemen's agreement," because it was a broader base than that—that was arrived at with Justice Adams in 2001 in not lobbying for changes outside the normal request-for-comment process. We do not think such action is in the best interests of consumers, and the Consumers Council of Canada condemns that kind of action.

The Consumers Council of Canada requests that the proposals in schedule D, Amendments to Bereavement Related Statutes, be passed without amendment in the best interest of Ontario consumers.

The Chair: Thank you. One minute and 24 seconds each.

Ms. DiNovo: Thank you for your submission and for the work that you do.

Of course I'm a big fan of Manitoba, being a New Democrat; not a problem there.

A question about the bereavement sector, and again I raise the question that I raised with the gentleman earlier about the open dialogue problems with this section of the act and the fact that they feel it will create an unequal playing field, that those who have, for example, church cemeteries, as you've heard, will be subject to different rules and regulations than those who are in the private sector. Some even deeper concerns were raised, for example, and this would affect consumers, about commissioned salespeople in the funeral business, which is not a spectre that I think any of us would want to imagine. So I just wanted further comment on that section.

Mr. Huzar: To speak to the last one first, on commission sales, the council, in its response for comment on that set of regulations, did not support the commissioning of sales in any part of the sector.

The issue of the level playing field is an interesting one. I'm sure, since we've been so involved in the last seven years, that you're not aware of the work that BSAC, the Bereavement Sector Advisory Committee, undertook. We went through a very, very rigorous facilitated mediation process, basically, by Justice Adams. Fifteen different groups within the bereavement sector played a role in that, and when we left that final day with the agreement with Justice Adams and the recommendations then sent to the government for the implementation, which then resulted in the act itself and the subsequent regulations, everyone had agreed that the playing field had been levelled. That's why we are spe-

cifically concerned that at this very late date these parties have come forward and said that the playing field is not level.

The Chair: Thank you. Government members?

Mr. Dhillon: No questions, Chair. Thank you very much.

The Chair: Official opposition?

Mr. Ouellette: Just to follow on the bereavement sector, you're saying there was an agreement that there was a level playing field. Do you have any documentation that indicates or states that and that you can pass on to the committee? Because, quite frankly, this is the issue that I'm hearing quite extensively on from my own riding, that it creates an unlevel playing field, as expressed to me. But if I can find something where these individuals have agreed to this at some point, that certainly kind of counters what they're saying to me.

Mr. Huzar: The only thing I could do is refer you to the report that Justice Adams made, and that would be his final report that was delivered to the Ministry of Consumer and Commercial Relations at that time.

Mr. Ouellette: So the committee that meets doesn't have any resolutions, any commitments, to say that there was full agreement?

Mr. Huzar: No. It was a facilitated mediation process to arrive at a common report.

Mr. Ouellette: One of the areas, as expressed by the one presenter today from the Catholic cemeteries, was that there are all these small locations that are located throughout the province, yet the locations that are being referenced to me by the individuals in my riding are the large locations that could eventually become competitors with them. Do you have any idea of how many are interred in these smaller locations, as opposed to the large ones?

Mr. Huzar: I'm afraid it's not my expertise, but I could make a personal comment. I sit as a member of a board of directors on a family—a private—cemetery. My immediate thought was, perhaps we should raise \$2 million and build a crematorium, and then we could have lots of money to look after our private cemetery.

The issue is not one that we wish to engage in. We believe that the recommendations that are brought forward in this legislation represent what was agreed to at that time, and we hold to that.

The Chair: Thank you.

As it is now exactly 6 o'clock, this committee stands adjourned until 3:30 tomorrow afternoon.

The committee adjourned at 1817.

STANDING COMMITTEE ON SOCIAL POLICY

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Mardi 5 décembre 2006

**Standing committee on
social policy**

Ministry of Government Services
Consumer Protection and Service
Modernization Act, 2006

**Comité permanent de
la politique sociale**

Loi de 2006 du ministère
des Services gouvernementaux
sur la modernisation des services
et de la protection
du consommateur

Chair: Ernie Parsons
Clerk: Trevor Day

Président : Ernie Parsons
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 5 December 2006

Mardi 5 décembre 2006

The committee met at 1601 in committee room 1.

APPOINTMENT OF SUBCOMMITTEE

The Chair (Mr. Ernie Parsons): I will call the meeting to order. I would first of all note that this is now my second day as Chair and I have not fully matured in the role. I have read a book called Committee Chairing for Dummies, so I think I'm prepared for any questions as long as I get 10 minutes to read the book again.

Mr. Peter Kormos (Niagara Centre): That's appropriate to us as members, I suppose.

The Chair: I don't think I'll go there.

I would ask your forbearance with me if I'm a little slow or I make a decision that you're not in agreement with but far too polite to raise the issue with me.

The first item we need is a new individual representing the government on the subcommittee. Is there a nomination?

Mr. Kuldip Kular (Bramalea-Gore-Malton-Springdale): I move that the membership of the subcommittee on committee business be revised as follows: that Mr. Peter Fonseca be appointed in place of Ms. Wynne.

The Chair: Any discussion or debate?

Mr. Joseph N. Tascona (Barrie-Simcoe-Bradford): What was that, again?

The Chair: Mr. Fonseca will be the representative on the subcommittee.

Interjections.

The Chair: Shall that carry? Carried.

MINISTRY OF GOVERNMENT SERVICES
CONSUMER PROTECTION AND SERVICE
MODERNIZATION ACT, 2006LOI DE 2006 DU MINISTÈRE
DES SERVICES GOUVERNEMENTAUX
SUR LA MODERNISATION DES SERVICES
ET DE LA PROTECTION
DU CONSOMMATEUR

Consideration of Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services / Projet de loi 152, Loi visant à moderniser diverses lois qui relèvent du ministère des Services gouvernementaux ou qui le touchent.

The Chair: We're ready to do clause-by-clause. There have been no amendments put forward for sections 1 to 7 inclusive. Shall there be any debate on the issue?

Mr. Kormos: There's a whole lot of stuff in this bill, no two ways about it. At the same time, the thrust of the bill, insofar as most of us are concerned, is with respect to the Land Titles Act and the land titles and land registry system, and a response to the so-called identification theft that has resulted in some very serious frauds on innocent victims. That's number one.

Number two, with respect to the gift cards, there is not much to talk about here in committee, because that's all reserved to regulation.

The area that has erupted as one of the most contentious in this legislation is the area around funeral homes. I want to indicate that that's where much of our focus will be, on the area of land titles and on the area of funeral homes. Again, the alcohol stuff is going to be done by regulation. It's not transparent in that it's not in the bill per se. So I just want to indicate that that's where our focuses are going to be, on the land titles stuff and on the funeral home stuff.

The Chair: Further debate? Mr. Tascona?

Mr. Tascona: I'm ready to proceed. It's a very lengthy bill, as you know, and we just want to make sure we know where you are, Mr. Chair, and we're comfortable.

The Chair: I'm with you.

Mr. John O'Toole (Durham): I just have a comment. I just want to acknowledge that it's highly exceptional in the 10 or 11 years that I've been here that Minister Phillips has on three separate occasions had correspondence with caucus members, which I think has been helpful. I want to put that on the record, and it's a positive compliment. He's working, it looks like, behind the scenes with the stakeholders in the land title insurance and mortgage fraud. In the issue around schedule D, in the funeral section, it's been very helpful.

It's my understanding that this package I have is all the amendments. Where are the opposition amendments? Are they here?

Mr. Tascona: Yes, they're in there.

Mr. O'Toole: They're not in here.

Mr. Tascona: We'll share them.

Mr. O'Toole: I've got only one set. I need a set of those, to be sure.

I appreciate being able to put that on the record, Chair, representing my constituents in the riding of Durham, because the funeral home business felt disadvantaged with the change in the rules. This was dealt with by a justice's report—the Adams report, I think—as well as in Bill 209, a previous bill. The differences between traditional funerals as well as the role of the cemeteries in that act and the funeral home act—I just want to put it on the record because I may not be able to stay for all of the amendments today. I want to mail that out to my constituents.

The Chair: Any other debate?

Mr. Kormos: Chair, we're dealing with—

The Chair: Sections 1 to 7.

Mr. Kormos: Sections 1 through 7, inclusive; yes, sir.

The Chair: Yes. The question is, do the members wish to deal with one motion dealing with sections 1 to 7, inclusive? Agreed.

Then, I will ask, shall sections 1 to 7 carry? Carried.

That moves us to section 8. There is a government motion on 8(1), moved by—

Mr. Vic Dhillon (Brampton West–Mississauga): I move that the definition of “Internet gaming business” in section 1 of the Consumer Protection Act, 2002, as set out in subsection 8(1) of the bill, be amended by striking out the portion before clause (a) and substituting the following:

“‘Internet gaming site’ means an Internet site that accepts or offers to accept wagers or bets over the Internet.”

The Chair: Do you wish to speak to your amendment?

Mr. Dhillon: This is, I believe, a technical amendment to clarify the scope of the prohibition.

The Chair: Any other discussion?

Mr. Kormos: This warrants a little bit more than that. The original definition was “‘Internet gaming business’ means a supplier that accepts or offers to accept wagers or bets over the Internet.” Now you're talking about an Internet gaming site, which is in many respects one remove from the actual corporate body. So what does that do in terms of the balance of the amendments and the section itself?

Mr. Dhillon: Thank you, Mr. Kormos. Based on consultation with our stakeholders, all of them, they felt that the “Internet gaming business” term was very ambiguous and the better term “Internet gaming site” is the more appropriate one to go with.

Mr. Kormos: Chair, if I may, of course, they're two very different things. Perhaps some of the policy people would help us with this, because I really want to know. The site is very different from the business, the operating mind, if you will. So if we can get some help with this.

Mr. Dhillon: Yes. Can we have—

The Chair: If you would state your name prior to responding.

Ms. Deborah Brown: I am Deborah Brown. I am with the Ministry of Government Services.

Mr. Kormos, the purpose of changing it from “Internet gaming business” to “Internet gaming site” was that we

wanted to be able to clarify that the prohibition applies to the advertising of websites and not the advertising of the parent companies. For example, if there was a parent company that was advertising, we did not want to include them in the prohibition; only the actual site that may be part of their company.

Mr. Kormos: I appreciate that. I can understand that. So you want to prohibit the advertising of the actual www.blowyourbrainsoutwiththisweekspaycheque.com site. But you still want to permit a company to advertise Poker—what are some of the names of these? I don't know—

Mr. O'Toole: Poker-dot.

Mr. Kormos: Poker-dot. So Poker-dot can put up big billboards that say, “Poker-dot-dot.” You know what's implicit in that, right? That's not the name of the site, but we know that at some point or another—do you understand what I'm saying?

Ms. Brown: I understand what you're saying.

Mr. Kormos: Is it fair to say that the existing legislation is broader, or the existing language in terms of—you go on to amend all subsequent sections that deal with this, right? But the existing amendment is broader than what you would propose, or narrower?

Ms. Brown: It's broader.

Mr. Kormos: Yes. So why are we moving from a broader to a narrower?

Ms. Brown: We're moving to a narrower because we don't want to capture a company that may be a parent and have several companies underneath them. We're going after the actual site. So if there is a site with a dot-com, and it's a site where you pay to gamble, then that is what we are trying to prohibit. We're not trying to prohibit the parent company.

1610

Mr. Kormos: I hear you. But, Chair, if I may—and I'm not going to carry this on at undue length—I think this is a serious error. This is the like the games that cigarette companies played around sponsoring tournaments and things like that. You know, like Benson and Hedges wasn't selling cigarettes by having huge billboards sponsoring the Benson and Hedges golf tournament, what have you. They were, at the end of the day. It's as simple as that. Do you understand what I'm saying, Parliamentary Assistant?

I'm not going to support the amendment. I think by making it narrower, you create a backdoor there, and it won't take long—I have no doubt that the lobbyists were successful. Now I've got an idea of who they were lobbying on behalf of, because you effectively will leave the door very much open to the Benson and Hedges golf tournament syndrome, which is as insidious a proposition as a Benson and Hedges “Smoke one and live longer” billboard.

I hear what you're saying. I appreciate the clarification. I'm disappointed in the government in this respect. I will not be supporting the amendment.

The Chair: Any other debate? Ready to vote?

Mr. Kormos: Recorded vote, please, sir.

Ayes

Dhillon, Fonseca, Kular, Leal, Ramal.

Nays

Kormos, O'Toole, Tascona.

The Chair: The amendment is carried.

The next one is government motion 2.

Mr. Dhillon: I move that section 13.1 of the Consumer Protection Act, 2002, as set out in subsection 8(2) of the bill, be struck out and the following substituted:

“Advertising illegal site

“13.1(1) No person shall advertise an Internet gaming site that is operated contrary to the Criminal Code (Canada).

“Facilitating

“(2) No person, other than an Internet service provider, shall arrange for or otherwise facilitate advertising prohibited under subsection (1) on behalf of another person.

“Meaning of ‘advertise’

“(3) For the purpose of subsection (1), a person advertises an Internet gaming site only if the advertising originates in Ontario or is primarily intended for Ontario residents.

“Same

“(4) For the purpose of subsection (1), ‘advertise’ includes,

“(a) providing, by print, publication, broadcast, telecommunication or distribution by any means, information for the purpose of promoting the use of an Internet gaming site;

“(b) providing a link in a website for the purpose of promoting the use of an Internet gaming site, but does not include a link generated as the result of a search carried out by means of an Internet search engine; and

“(c) entering into a sponsorship relationship for the purpose of promoting the use of an Internet gaming site.

“Application

“(5) This section applies despite subsection 2(1).”

The Chair: Does the mover wish to speak to the amendment?

Mr. Dhillon: Again, this is an amendment of a technical nature.

The Chair: Discussion?

Mr. Kormos: On the contrary, it's not technical at all. It changes the whole thrust of the prohibition. You used to prohibit, in the original amendment, advertising a gaming business, a “supplier that accepts or offers to accept wages or bets over the Internet.” Now you're just prohibiting the site. In other words, you can't have a billboard that says www.pokerplay.com, but you can have a billboard that says, “Play poker online, illegally, operated by Conrad Black and Barbara Amiel until their funds are released by the courts. Google us and we won't be hard to find.” That ad would be permitted. I'm being hyperbolic, for sure, not about Conrad Black and Barbara

Amiel but about the language that will be used. It's not technical at all, sir. You're shutting the front door but you're leaving the backdoor wide open. They got to you. I find that remarkable. They got to you, and it's a shame. I have no more comments. I won't be calling for a recorded vote. New Democrats oppose the change of the definition, and this flows from that change of definition.

The Chair: Any further debate? Shall I call the question? Shall the amendment carry? Those in favour? Those opposed? Carried.

That brings us to amendment 2.1.

Mr. Tascona: Pull them.

The Chair: Pull them? Okay, so we move in the package to amendment 3. Moved by?

Mr. Dhillon: I move that subclause 116(1)(b)(i) of the Consumer Protection Act, 2002, as set out in subsection 8(12) of the bill, be struck out and the following substituted:

“(i) in respect of part II, Consumer Rights and Warranties, subsection 10(1), section 12, subsections 13(2) and (7) and subsections 13.1(1) and (2).”

The Chair: Do you wish to speak to the amendment?

Mr. Dhillon: Yes.

Mr. Kormos: Call the question.

The Chair: Okay. Those in favour? Opposed? Carried.

The next question is, shall section 8, as amended, carry? Any debate?

Mr. Kormos: Recorded vote, please.

Ayes

Dhillon, Fonseca, Kular, Leal, Ramal.

Nays

Kormos, O'Toole, Tascona.

The Chair: The section carries.

Sections 9 to 13 have no amendments presented. I'll call the question. Shall sections 9 to 13 carry? They are carried.

That moves us to section 14, and we have amendment 3.1. Moved by?

Mr. Tascona: I move that section 14 of the bill be amended by adding the following subsections:

“(0.1) The Land Registration Reform Act is amended by adding the following section:

““Certification

““13.0.1(1) A document that is described in subsection (2) shall not be registered under the Land Titles Act or the Registry Act or deposited under part II of the Registry Act unless it contains the certification described in subsection (3) given by the prescribed person.

““Application

““(2) Subsection (1) applies to,

““(a) a document in electronic format as defined in section 17; or

“(b) a prescribed document that is not in electronic format as defined in section 17.

“Certification

“(3) A certification shall specify that,

“(a) the person giving the certification has authority to act for the prescribed person who gave the authority to act in relation to the prescribed class of document and the latter person has legal capacity to give the authority;

“(b) the person giving the certification has taken reasonable steps to confirm the identity of the person who gave the authority to act;

“(c) the document complies with the requirements for registration or deposit under the Land Titles Act or the Registry Act; and

“(d) the person giving the certification has evidence showing the truth of the statements described in clauses (a) to (c).

“(0.2) Subsection 14(1) of the act is amended by adding the following clause:

“(c) prescribing anything that is described in section 13.0.1 as being prescribed;”

1620

The Chair: There is some question as to whether this falls outside the scope of the bill, but for purposes of debate, I'm going to have it stand. Do you wish to speak to the amendment?

Mr. Tascona: Yes. This deals with the Land Registration Reform Act in terms of documents electronically transmitted or a prescribed document not in electronic format. This is just to ensure that the document is certified and is a legitimate document, because a lot of transactions today in real estate are transmitted through electronic format. This is a certification to ensure that the document is what it purports to be. It's important that the documents going through the system are certified, to prevent identity theft.

Mr. Kormos: I think this makes eminent good sense. The weakness in the system clearly is with electronic registration. That is where the greatest potential is for fraud, because no actual documents are being examined by any clerk or officer who registers those documents. I think this is a modest proposal that will strengthen the system. New Democrats will support it.

The Chair: Any other debate? I'll call the question.

Mr. Tascona: Recorded vote.

Ayes

Kormos, O'Toole, Tascona.

Nays

Dhillon, Kular, Leal, Ramal.

The Chair: The motion is lost.

That take us to motion 4, moved by Mr. Dhillon.

Mr. Dhillon: I move that the Land Registration Reform Act, as amended by subsection 14(4) of the bill, be amended by adding the following section:

“Withdrawal of suspension

“23.2.1(1) At any time after suspending the authorization of an electronic document submitter under section 23.1, the director of land registration may, by order and without holding a hearing, withdraw the suspension if that director has not revoked the authorization under section 23.2 and if that director considers it in the public interest to withdraw the suspension.

“Service of order

“(2) If the director of land registration makes an order under subsection (1) withdrawing a suspension of an authorization of an electronic document submitter,

“(a) any notice of proposal that the director of land registration has served under section 23.2 with respect to the authorization is void and any hearing commenced under that section with respect to the authorization is terminated; and

“(b) the director of land registration shall serve the order on the submitter.”

The Chair: Does the mover wish to speak to the amendment?

Mr. Dhillon: These provisions would provide powers to the director of land registration to safeguard the land registration system and titles to people's homes from unauthorized registrations. These amendments would ensure fairness, providing the suspended party with an expeditious process to deal with the suspension. It's a consumer protection mechanism against fraud, and the director will work with stakeholders to set guidelines in exercising this power.

Mr. Kormos: With respect, that's not a very satisfactory explanation of what the amendment does. The amendment permits the director, after suspending someone, to reinstate them without a hearing: “At any time after suspending ... the director of land registration may, by order and without holding a hearing, withdraw the suspension....” Why would the government contemplate the withdrawal of a suspension without a hearing?

Mr. Dhillon: I'm going to ask ministry staff to comment on that.

Ms. Kate Murray: I'm Kate Murray, with the Ministry of Government Services. The question was, why would we contemplate withdrawing the suspension without a hearing? We had consultation with our stakeholders with respect to this power, and the request was that there could be a situation where the electronic submitter could show to us that the suspension should be withdrawn and that that would not need a hearing, so we provided for that in the legislation.

Mr. Kormos: To be fair, that's what I presumed the intention was, because the intention is pretty apparent in the language of the legislation. But I've got to tell you, the suspension of a submitter's authorization is, in and of itself, a very serious move, because it's inevitably an impact on that person's livelihood. I'm not suggesting that directors would not contemplate erring on the side of caution, but perhaps one of the frailties in the legislation is that it doesn't—because there is this balancing act between providing access and ensuring the integrity of it.

How tightly, how rigidly do you control access to the point where you impede access without infringing upon the practicality of the electronic registration system?

With respect, I think there's a problem here. It boggles the mind that there should not be a hearing of some sort. I'm not suggesting that it be something that takes a whole lot of time to arrive at or that it necessarily takes a whole lot of time to deal with, but it seems to me that once a director has suspended authorization, that is a serious move in and of itself and there ought to be a hearing process before suspension is reinstated.

New Democrats will not be supporting this amendment.

Mr. O'Toole: Just one question. We received a memo today from the minister, and it follows up on what Mr. Kormos says. I maybe just need an explanation. It says, "The director would be required to notify the suspended party within two business days of the suspension, and would have to hold the requisite hearing within 10 business days. The amendments would also provide the director with the authority to withdraw the suspension without holding a hearing." I hope that means that if there's evidence presented, there is no hearing required that the person shouldn't be suspended. Is that what that means?

Ms. Murray: Yes.

Mr. O'Toole: So there has to be some clarification of whether the person should be suspended by some process other than a hearing.

Ms. Murray: Yes.

Mr. O'Toole: If that's what the amendment does, I am supportive of it.

Mr. Tascona: I don't favour any part of subsection 14(4) of the bill. I echo the comments of my colleague Peter Kormos. This was commented on at length by a number of lawyers and benchers of the law society in terms of what one is doing here. The process is flawed. This is not what we're supposed to be dealing with. If a lawyer is in trouble and is not doing their job, the law society is going to deal with them. There's LawPro, and everybody would be involved in that.

The director of land registration should be focusing on the integrity of the system, as opposed to being the one who's going out and doing the enforcement. That's not the role, in my view, of the director of the land registration system.

I don't support any of these amendments dealing with subsection 14(4). I think there is an enforcement agency to deal with certain types of individuals who are dealing with this, especially since the government has moved to ensure that the only people who can register are lawyers. We don't need another overriding body to deal with lawyers in terms of what they do with their job. Do you not understand that? The only people who are going to be able to register on the system are lawyers, so the only people who are going to be suspended from the system without a hearing and lose their livelihood in terms of dealing with the real estate system are lawyers. You've got the director of land registration not being required to

hold a hearing, and cutting them off from their livelihood.

I don't think it's fair. I don't think the process is what it was intended to deal with. You don't even understand what you're doing here, and I think you were told in the public hearings what you are going to be doing. Any small-town lawyer out there—I'd be surprised if the lawyers out in Peterborough and smaller communities aren't saying, "What are you trying to do to me? There are already things in place to deal with me if I don't do my job. I don't need the director of registration to cut me off from doing my job."

This isn't right. We're not going to support this. Quite frankly, the government should scrap that whole section. They know they should do it, because of who they're putting the onus on in terms of who can register. I don't think you understand what you're doing.

1630

Mr. Kormos: This is the "Oops, we're sorry; we overreacted" amendment. Think about it. Look at the threshold for suspension: that "the director has reasonable grounds to believe" that a submitter has submitted a fraudulent document etc. That's not an unreasonable standard. Most of us are pretty familiar with it. It's pretty darn close to a *prima facie* case. So what are we saying? Understand what happens. If you're talking about a real estate lawyer and he or she gets suspended, if the suspension lasts for 24 hours, it means that all the deals he or she was supposed to close that day don't get closed and a whole lot of families don't move into their new homes and the buyers of their homes don't move into theirs. But then you can say, "Oops, we're sorry," after the person has been suspended for a day or two days? That invites, in my view, capricious suspensions, because the director knows that he or she could simply say, "Oops, we're sorry," and then reinstate you after you've lost all your closings for the next three days, and your reputation and your client base.

It seems to me that if you're allowing a director to consider relevant facts after the suspension, implicit in 23.1, as proposed in subsection (4), the suspension powers—"reasonable grounds to believe"—implicit in that is a director making reasonable inquiries. Why would a director, prior to suspending somebody, not make the reasonable inquiries that you're saying he would make after the suspension that would permit him to say, "Oops, I'm sorry"? Down where I come from, we'd call this doing things ass-backwards, it seems to me. That's down in small-town Ontario. That's what we'd call it.

The Chair: I'm not sure that's language that—

Mr. Kormos: It's not parliamentary, but it's what we'd call it down where I come from. I bet where you come from too they'd call it that.

The Chair: Never. We pronounce it differently.

Mr. Kormos: It's the dialect, the accent; I understand.

We can't support this. You had something to work with here, and you're taking a tenuously acceptable bill

down to the point where it's going to become contentious now. That's a shame.

The Chair: Any further debate?

Mr. O'Toole: I just want to put on the record that as long as—I'm content that the law society has no reason to question it and are going to take appropriate disciplinary actions for those participating in any fraudulent activity on registration. That's what this is about, technically. I'm happy. As a profession, they are self-regulating, and as such, the law society is supposed to deal with that in a disciplinary function. I would hope there would be dialogue between the land registrar and the law society, at least if there's suspicion. Would that happen in due process? If there's some client with something registered on title and you've been part of that, and you're satisfied that that's a professional action that's taken place, would you be in touch with the law society?

Ms. Murray: Yes, we are in touch with the law society and others such as the police.

Mr. O'Toole: Do they prosecute or discipline today?

Ms. Murray: Did the law society prosecute people? Yes.

Mr. O'Toole: And discipline?

Ms. Murray: And they discipline, yes.

Mr. O'Toole: Okay. Well, that's good. I'm happy. As the profession has been described here, it's their duty of care and responsibility as a professional to provide that service, and if somebody, through whatever recourse, suspects something, they're out of business, they've lost their reputation. That's pretty onerous. The law society should be taking care of it.

The Chair: If there's no further debate, I will call the question.

Mr. Kormos: Recorded vote, please.

Ayes

Dhillon, Fonseca, Kular, Ramal.

Nays

Kormos, O'Toole, Tascona.

The Chair: The amendment is carried.

Government motion 5, moved by Mr. Dhillon.

Mr. Dhillon: I move that subsection 23.1(3) of the Land Registration Reform Act, as set out in subsection 14(4) of the bill, be struck out and the following substituted:

"Length of suspension

"(3) A suspension made under subsection (1) shall last until the earlier of the following times:

"1. The time that a final determination is made under section 23.2 on the revocation of the authorization of the electronic document submitter.

"2. The time that the director of land registration withdraws the suspension under section 23.2.1, if applicable."

The Chair: Does the mover wish to speak to the amendment?

Mr. Dhillon: The reasoning is pretty much the same as for the last amendment.

The Chair: Any other discussion?

Mr. Kormos: If I may, this amendment responds to the last amendment, including the second consideration, and that is suspension by the director. So it's not unreasonable; it's necessary, in fact. So it's not contentious. But it flows directly from the last amendment.

Mr. Tascona: The government motions tied together here, 4 through 8, are all ridiculous. We won't support them because of what we said before. They're all related. They want to put in a certain class of people involved in the system and it's not fair. There's no due process. We won't be supporting any of them, so you can keep reading them.

Mr. O'Toole: Chair, can I ask a point of clarification of staff? Is it a lawyer actually doing the function, or is it some clerk appointed by the—

The Chair: If you could come to the table, please.

Mr. O'Toole: Does the lawyer actually do the registration? Can you attest to that? Or is it some clerk giving their PIN number or something? Is it the lawyer personally who does it, or is it someone with their PIN, someone in another function designated by the lawyer to do this?

Ms. Murray: If I understand your question, you're asking who does the registration.

Mr. O'Toole: Yes.

Ms. Murray: It's not limited to a lawyer to do a registration. A lawyer can do the registration, other office staff in a lawyer's office can do a registration and other people with licences to register in the electronic system who are not lawyers may also register documents, under the current provisions.

Mr. O'Toole: Thank you.

The Chair: Any further debate? I'm going to call the question.

Mr. Tascona: Recorded.

Ayes

Dhillon, Fonseca, Kular, Ramal.

Nays

O'Toole, Tascona.

The Chair: The motion is carried.

That moves us to 6.

Mr. Dhillon: I move that subsection 23.2(1) of the Land Registration Reform Act, as set out in subsection 14(4) of the bill, be struck out and the following substituted:

"Revoking access to database

"23.2(1) If the director of land registration has suspended the authorization of an electronic document submitter under section 23.1 and has not withdrawn the suspension under section 23.2.1, that director shall, within two business days of the suspension, notify the

submitter that he or she proposes to revoke the authorization.”

The Chair: Do you wish to speak to the amendment?

Mr. Dhillon: It's pretty much similar reasoning as the last amendment.

The Chair: Any other debate?

Mr. Tascona: Recorded vote.

Ayes

Dhillon, Fonseca, Kular, Ramal.

Nays

O'Toole, Tascona.

The Chair: The motion is carried.
Amendment 7.

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Mr. Dhillon: I move that subsection 23.2(5) of the Land Registration Reform Act, as set out in subsection 14(4) of the bill, be amended by adding “within 10 business days” at the end.

The Chair: Do you wish to speak to it?

Mr. Dhillon: Same as last.

Mr. Tascona: Recorded vote.

The Chair: Other debate?

Mr. Kormos: It is similar to the previous amendment, but the two also add a bit of a substantive change to these particular sections. In the last amendment, you create a two-day time frame and in this amendment you create a 10-business-days time frame. That's a considerable difference from the existing bill. But I still take us back to—because we're talking here about the two different stages: the suspension and the revocation. The problem is that there is no entitlement to a hearing or a suspension, even though the suspension can result in a suspension that's up to two days in which to notify the party plus 10 business days. That means 14 calendar days, give or take. If I'm not adding this up right, let me know. So that's 14 calendar days, and if it's a stat holiday, if the Monday or Friday is a stat holiday, not a business day, it could be 15. I hope I recall what constitutes business days. You talk about 15 days of suspension before the hearing on what began as a suspension, then an intention to revoke.

The overhead of some of these law firms is tremendous, because in fact it's the staff who do most of the work. Lawyers don't work hard; staff work hard. It's like politicians. Politicians don't work hard; it's the staff who work hard. You're talking about some law firms with tremendous overheads, and two weeks of being out of the scene can be devastating.

I'm not in any way, shape or form suggesting that we should not be rigid in terms of protecting the integrity of the system. That's the goal of the whole exercise here. I just find it increasingly peculiar as to what the role of the director is. It seems to me that the role of the director here is increasingly being enhanced as a post facto role. In other words, it isn't to gatekeep vis-à-vis documents

coming into the system; it's to deal with a submitter after the fact.

The argument that's being inherently made in that is that the problem we have is a group of sloppy or negligent or criminally bent lawyers out there, or other people in the business. That's a very unfortunate perspective, because the perspective should be, “How do we strengthen the system inherently?” rather than simply say, “Well, if we punish people who”—look, even the lawyer who's going to knowingly peddle forged documents of participating frauds knows that at some point the jig is up, and he could care less: “So you suspend me. Well, I had my run.” It's like you're at the slots. You've had a good two-week run and you're finally broke. You can at least walk away saying, “But I've had a good run,” if you're inclined to do that sort of stuff.

This doesn't enhance the integrity of the system. It's all after the fact. What we need to hear from the government are ways to adequately screen the documents coming in, to prevent forged or fraudulent documents from being registered and relied upon. It's important to catch the perpetrators.

I just find it regrettable in view of how the government has amended the section so far. This isn't inconsistent. At least there's a time frame, within 10 business days, because, to be fair, the existing bill has no time frame, and that should be a cause for concern as well.

It just seems very peculiar that the person suspended has no right to a hearing, as I read the bill. A two-day suspension could be devastating at the end of the month, when deals are being closed. I don't know. I wish you well, Parliamentary Assistant, and I appreciate that you don't, at the end of the day, necessarily make all of these decisions around these types of amendments. It's regrettable too, quite frankly.

My Conservative counterparts here referred to the seemingly helpful letter that we got from Minister Phillips dated December 5. I was grateful for getting it too. I appreciate that the letter wasn't intended to deal with the minutiae, but it left an impression that the bill was being strengthened, improved, in accordance with submissions that have been made. I don't think so. Just as I say that you don't sit down at your computer, Parliamentary Assistant, and write these amendments, Mr. Phillips, the minister, doesn't sit down at his computer and write these letters. There's a whole department that's devoted to correspondence, amongst other things.

It really is unfortunate. We're not going to get too many kicks at the can. We've seen the anguish of victims. Mr. Tascona had victims at his press conference when he introduced his Bill 136. Ms. Lawrence participated in these hearings. Presumably the government wants to come up with a package that's going to have those victims saying, “Thank goodness. It'll never happen to somebody else now,” at the very least. But I'm not sure we're getting there. That's it, sir.

Mr. Khalil Ramal (London-Fanshawe): Just for the record, it doesn't mean, when Mr. Kormos was talking about the government or the land registry office, it's not

going to screen the applications before they approve them; but in case, after they have gone through the system. I think it's a logical approach and good timing to suspend the documents within two days. I think it's normal to give 10 days for hearing in order that he or she can prepare themselves to defend their reputation and their applications.

Mr. Tascona: The only thing I would add is that it's not going to get at the root problem, which is the person who dupes the lawyer or who is involved in the real estate transaction. The identity theft issue: You're not going to get at that person who is the problem. You're presupposing criminal intent on behalf of the lawyer. If that's the case, the lawyer is going to get disbarred anyway and won't be practising. So what you're bringing in here is an unnecessary procedure that doesn't get at the persons who are dealing with the identity theft. You should just call the question.

Mr. Dhillon: I just wanted to mention that this is about protecting the consumer and not worrying about lawyers who have high overhead. If examples are made of them, I think it's absolutely worth it because it's about protecting the consumer. The news will fly pretty quickly in the legal industry that this stuff won't be tolerated, and the minister and his ministry have worked very hard in doing that. So, obviously we're in favour of this.

Mr. Kormos: First, Mr. Ramal, in electronic registrations nobody is screening the documents. It's the submitter who screens the documents. She or he is the gatekeeper. They don't submit even a scanned document for submission to the director, to the registrar; they simply submit the information that they allege or purport to be on that document. That's number one. So nobody is screening these in electronic registration. That's why I started expressing my concern about the electronic registration system.

Number two, to Mr. Dhillon: First of all, one hopes that people are adequately screened before they're given authorization, and I'm confident—that's after the Auditor General's report, or today I shouldn't be so confident—I'm optimistically confident that that's the case. So you identify these people. You know who they are. They're people with good records, good character etc.

You've got two issues. You've got the issue Mr. Tascona spoke of, where you get the lawyer who is the dupe, who may have undertaken all of the due diligence but nonetheless becomes a party by virtue of being the conduit, and who is not committing any frauds and who has exercised all of the due diligence. That lawyer—quite frankly, I don't go around talking about taking people's livelihoods away lightly. I'm amazed that you could suggest that. That's not what a regulatory regime is designed to do. Don't forget, you have "reasonable grounds to believe." That's not capricious. Unfortunately, you've created that standard and now you're diminishing that standard with the amendments you've made. That's what I said a few moments ago.

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If it's about protecting the consumer, there's nothing in any of the provisions of section 14 that talks about protecting the consumer, because the consumer has already been defrauded before section 14 can be invoked or utilized. The problem here is the gate and the fact that there's no in-house gatekeeper with respect to electronic registration. That's the problem.

Fine, pass your amendments, but let's not pretend there's something—this is all after the fact. There's a guy waiting in custody up in—where is that?—who slaughtered that woman jogging and has been charged with drunk driving. Big deal; we caught him. That woman's dead. He should be treated severely, but anything they do to that guy isn't going to restore that woman's life. You know the case I'm talking about; it's on the front page of the paper. It's after the fact. What we need are controls to prevent fraudulent documents from getting into the system in the first place, just like we need controls to prevent drunk drivers from getting behind the wheel, with respect.

The Chair: Shall I call the question?

Mr. Kormos: Please.

The Chair: Those in favour? Those opposed? The motion is carried.

This moves us to amendment 8.

Mr. Dhillon: I move that subsection 23.2(6) of the Land Registration Reform Act, as set out in subsection 14(4) of the bill, be struck out and the following substituted:

"Written hearing

"(6) The hearing shall be a written hearing unless the director of land registration or the electronic document submitter requires that the hearing be an oral hearing."

The Chair: Any debate or discussion?

Mr. Tascona: No. Call the vote.

The Chair: I will call the question.

Mr. Tascona: Recorded.

Ayes

Dhillon, Fonseca, Kular, Leal, Ramal.

Nays

Tascona.

The Chair: The motion is carried.

Motion 8.1, moved by Mr. Tascona.

Mr. Tascona: I move that subsection 14(4) of the bill be struck out.

The reasoning on that I have indicated before, with respect to the process. Going back to what Mr. Kormos mentioned, the government voted down a certification process to make sure that document was valid, which would mean subsection 14(4) wouldn't even be needed. Instead of supporting a process to make sure that documents that go to and through the land titles system are valid and certified, the government votes that down

and then says, “We want to set up a non-hearing process for suspension and a back-ended process with respect to reinstatement.” That doesn’t solve the problem and is a waste of everybody’s time in the system. What people need to prevent identity theft are documents that are what they say they are. The government voted that down and purports to say they’re going to protect the consumers by putting in place a process that won’t work.

The Chair: Any other debate? I’ll call the question.

Mr. Tascona: Recorded vote.

Ayes

Kormos, Tascona.

Nays

Dhillon, Fonseca, Kular, Leal, Ramal.

The Chair: The motion is lost.

We have finished the amendments in section 14, so I will call the question. Shall section 14, as amended, carry? Carried.

Section 15 brings us to amendment 9.

Mr. Dhillon: I move that clause (a) of the definition of “fraudulent instrument” in section 1 of the Land Titles Act, as set out in subsection 15(1) of the bill, be amended by striking out “grant” and substituting “transfer”.

The Chair: Mr. Tascona.

Mr. Tascona: I understand why the government made that amendment, but if they want to look at my motion 9.1, I think it is consistent with what you’re looking to do. The language is almost identical. It uses “receive,” which you have in your (a), also puts in “transfer,” which you’re looking to put in, and also adds “discharge,” because that’s what happens to property. The only thing I’m looking to add is “discharge.” The government may perhaps want to look at my amendment and broaden the scope of what they’re trying to do under clause (a). If they’re in agreement with that, perhaps they would support my motion as opposed to theirs.

Mr. Kormos: Help me, folks. I’m old enough that most of the modest experience I had with this kind of stuff was in the registry system. I don’t think I ever did a land title except many, many years ago as a student. You’ve changed “grant” to “transfer”—just a brief explanation of that. Mr. Tascona talks about including “discharge,” and I presume that means he wants to ensure that discharges of mortgages—that is one of the means of effecting a fraud: you discharge the mortgage that’s registered on the property so it looks to a subsequent mortgagee that the property is free and clear. Help us. If your language includes “discharge” or if “discharge” is elsewhere, can you explain to us how? And the grant/transfer stuff: is that—

Ms. Dianne Carter: My name is Dianne Carter. I’m from the Ministry of Government Services.

First of all, with respect to the term “grant,” “grant” is a word that would be used in the registry system, and

“transfer” is more appropriate under the Land Titles Act. With respect to discharges, if you look to clause 15(1)(d) of the bill, the definition of “fraudulent instrument,” it’s an instrument “that perpetrates a fraud as prescribed with respect to the estate or interest in land affected by the instrument.” A fraudulent discharge would be captured by clause (d).

Mr. Kormos: Then I trust (d) is a pretty broad catch-all?

Ms. Carter: It’s a catch-all, yes, that’s intended to capture fraudulent—

Mr. Kormos: Yes, and you say it includes discharges of mortgages, but is that your catch-all, your fail-safe?

Ms. Carter: Yes.

Mr. Kormos: Fair enough. And I appreciate that in terms of grant/transfer, you folks know that too.

The Chair: We currently have a motion on the floor.

Mr. Tascona: May I have a further explanation? It’s subsection 15 what?

Ms. Carter: The definition of “fraudulent instrument,” clause (d).

Mr. Tascona: “That perpetrates a fraud as prescribed with respect to the estate.” How does that refer to discharge?

Ms. Carter: A fraudulent discharge would be used in perpetrating a fraud.

Mr. Kormos: That’s an interest in land.

The Chair: Legislative counsel would also like to make a comment on this.

Mr. Michael Wood: I’m Michael Wood, legislative counsel. I’d just point out that clause (d) of the definition of “fraudulent instrument” requires that regulations be made to specify what is the fraud that’s being perpetrated. So if you don’t have regulations, it wouldn’t capture a discharge; if you do have regulations, you can capture a discharge.

Mr. Tascona: I thank Mr. Wood for that clarification. As I said, to be clear and precise, I would suggest that the government pull their motion and adopt mine. I think that would capture everything we need to do. If you’re not going to put forth regulations—there’s no guarantee that they will. That’s exactly the point.

The Chair: We have a motion on the floor. If it is not withdrawn, I’ll call the vote.

Mr. Kormos: A recorded vote, please. I’ll ask for a five-minute recess, as per the standing orders.

The Chair: A recess.

The committee recessed from 1700 to 1706.

The Chair: We are back in session. I am going to call the vote on government motion 9.

Ayes

Dhillon, Fonseca, Kular, Leal.

Nays

O’Toole, Tascona.

The Chair: The motion is carried

We move next to PC motion number 9.1.

Mr. Tascona: There's only one word change here now that the government has moved forward with that definition under 15(1)(a). We're adding the word "discharge" because, as was pointed out by legislative counsel, though staff says 15(1)(d) catches a discharge, there have to be regulations. Out of an abundance of caution, we're putting in the word "discharge," which would mean a one-word change to 15(1)(a) in this context. That's our motion. The motion is:

I move that clause (a) of the definition of "fraudulent instrument" in section 1 of the Land Titles Act, as set out in subsection 15(1) of the bill, be amended and the following substituted:

"(a) under which a fraudulent person purports to receive, transfer or discharge an estate or interest in land."

The Chair: Any other debate?

Mr. Kormos: I think this makes eminent good sense, because it recognizes that discharges of mortgages are one of the fundamental manners in which fraud is committed, and rather than leave it to the sort of catch-all at the end, it puts it in front and centre along with transfers—deeds, if you will—and of course it makes it explicit. It's not dependent upon prescription by regulation. I think it's important that the government support this. It strengthens the bill, makes the bill just a little bit better.

The Chair: Any further debate? I'll call the vote.

Mr. O'Toole: Recorded vote.

Mr. Kormos: Call the question.

Mr. Jeff Leal (Peterborough): I have a question, please. I just want to go through—it says here "discharge." I'm aware of a situation that occurred a few years ago in my community. I just want to get assurance about a discharge after a mortgage has been paid off. Is this bill going to cover this issue down the road, in a further—

Ms. Carter: I don't understand your question.

Mr. Leal: Is there another section we're adding that is going to cover the issue of discharge?

Ms. Carter: I'm sorry, I don't understand your question.

Mr. Leal: I'll try again. When a mortgage gets discharged, after it gets paid off, there can be a time, because of that occurring, that a fraud may occur after a mortgage has been paid off.

Ms. Carter: Oh, are you suggesting that there's a valid mortgage that's on title and the fraudster would discharge it and then go out and try and get a mortgage?
1710

Mr. Leal: Sorry. I'm not a lawyer. You would know better than I. Yes, I think that's what I'm getting at.

Ms. Carter: Well, what would the concern be? The mortgage would be under the provisions of the bill. A fraudulently obtained mortgage would be fraudulent and wouldn't affect the title.

Mr. Leal: I'll think about it for a moment.

The Chair: I am going to call the question.

Mr. O'Toole: Recorded vote.

Ayes

Kormos, O'Toole, Tascona.

Nays

Dhillon, Fonseca, Kular, Leal, Ramal.

The Chair: The motion is lost.

Government motion 10.

Mr. Dhillon: I move that clause (c) of the definition of "fraudulent person" in section 1 of the Land Titles Act, as set out in subsection 15(1) of the bill, be amended by adding "knowingly" after "person".

The Chair: Any debate? Mr. Kormos.

Mr. Kormos: This is very interesting, because you detract once again from the bill. You don't strengthen it, you weaken it. Some help, please. "Fraudulent person" becomes relevant when we're dealing with what, if I may, to the bureaucrats here?

Ms. Carter: "Fraudulent person" is relevant to whether or not an instrument is a fraudulent instrument.

Mr. Kormos: That is, if a fraudulent person executes or purports to execute an instrument, then it creates the fraudulent instrument?

Ms. Carter: There are a number of ways a person could be considered a fraudulent person.

Mr. Kormos: Yes. But what's the relevance of that?

Ms. Carter: What's the relevance of adding the word "knowingly"?

Mr. Kormos: No, no. Here in the amendment, why are you creating a definition of "fraudulent person"?

Ms. Carter: Because a fraudulent person—

The Chair: I wonder if leg counsel would like to speak to it?

Mr. Kormos: Please, sir.

Mr. Wood: Yes. Michael Wood, legislative counsel. You start with the definition of "fraudulent instrument." In order to understand that definition, every time you see the term "fraudulent person," you then have to read in the definition of "fraudulent person." By having two definitions, it allows the definition of "fraudulent instrument" to be a little more concise. You don't have to set out info, what you mean by "fraudulent person" every time you mention "fraudulent person" in the definition of "fraudulent instrument."

Mr. Kormos: Fair enough. But the only time "fraudulent person" is referred to is in (a)?

Mr. Wood: No. It appears in clauses (a), (c) and—

Mr. Kormos: So you're saying that this is sort of a shortcut in terms of getting at what constitutes a fraudulent instrument.

Mr. Wood: Yes. It's a drafting shortcut. Rather than set out in full, you can use that defined term.

Mr. Kormos: Thank you very much. I appreciate that.

The Chair: Mr. Tascona.

Mr. Kormos: I wasn't finished this.

The Chair: Oh. I was just—

Mr. Kormos: But I'll yield to Mr. Tascona. Now I want to get to the "knowingly" part.

Mr. Tascona: Under (c), is it going to be "the person knowingly holds oneself..."?

Mr. Kormos: Knowingly forged.

Mr. Tascona: No. Under 15(1)(c), it will be amended by adding "knowingly" after "person," so "the person knowingly holds oneself out"—is that what it means?

Ms. Carter: Yes.

Mr. Tascona: Okay. Why would you be bringing in knowledge, intent to this particular situation? If "the person holds oneself out in the instrument to be, but is not, the registered owner of the estate or interest in land affected by the instrument," why are you bringing in knowledge?

Ms. Carter: There was a concern that in the situation where you have a bona fide purchaser for value from a fraudster, the transfer to the bona fide purchaser for value firstly wouldn't be valid; however, that bona fide purchaser for value would be eligible for compensation out of the fund. Our stakeholders were concerned that for some reason the bona fide purchaser for value could possibly be caught by the definition "fraudulent person," so for greater certainty, we've added the word "knowingly."

Mr. Tascona: Okay. I yield back to Mr. Kormos.

Mr. Kormos: You've made it more interesting. With the definition, "the person holds oneself out in the instrument to be, but is not, the registered owner," you're suggesting that the innocent purchaser for value is not the registered owner but is a victim of a scam, a con, so does not knowingly hold himself out to be the registered owner, but is not. Joe, what's the criminal defence used in trespass?

Mr. Tascona: Actus reus or mens rea?

Mr. Kormos: No, used as a defence where you have good-faith belief versus—

Mr. O'Toole: He's the commercial law department.

Mr. Kormos: But you know what I'm saying. Why can't the person simply defend him- or herself? We're not talking about prosecution here.

Ms. Carter: That's right, but there was a concern that if the bona fide purchaser for value would be considered a fraudulent person, then—for example, if they got a mortgage, the mortgage would be considered invalid because it was given by a fraudulent person. The intention of the legislation is that, in that case, if a bona fide purchaser for value, without notice of the fraud, goes out and gets a mortgage, the mortgage would be considered valid. The clarification of the word "knowingly" ensures that the bona fide purchaser wouldn't be considered a fraudulent person.

Mr. Kormos: The mortgage would be valid but not as against the land if they were acting in good faith but had acquired the land pursuant to a corrupt or forged document.

Ms. Carter: What question are you asking me?

Mr. Kormos: The government's premise is that good title can't flow through a fraudulent document.

Ms. Carter: For the most part, that's correct.

Mr. Kormos: Yes. And it's responding to the finance company and case that we've all read about at the Court of Appeal. If good title can't flow, why would there be a concern about the validity of a mortgage as against the land, as compared to as against the person? Nobody is arguing that that person, be they bona fide good-faith purchasers or be they fraudulent purchasers—regardless of what happens here, nobody is arguing that there shouldn't be personal liability, right? Nobody is suggesting that at all. A person who signs a mortgage is the person who is liable. The interest that's being preserved here is the legitimacy of the ownership of the land.

So I still don't understand—it's getting late in the day; bear with me. I'm sorry that it's taking as long as it is. Why is there a concern, then, about the scenario you described? What circumstances would you want for there to be a good mortgage against the land, that is, compared to the borrower, in terms of a debt—why are you concerned about a good mortgage as against the land, when you're saying that you don't want title to land to be capable of being transferred with a corrupt instrument or a forged instrument?

Ms. Carter: The intention of the legislation is that any instrument that's given by a fraudulent person would not be valid. A bona fide purchaser for value is not a fraudulent person.

Mr. Kormos: Help me once again. Say I'm John Doe, like the old Hungarian fellow who had a rental property he owned for 40 years, probably hadn't seen in 10. As long as he got the rent cheques, he was happy. Joe Tascona comes along and sells the land out from underneath me without me knowing it—

The Chair: Sounds like Joe.

Mr. Kormos: The Joe you know—to Ms. DiNovo. She's a purchaser for value in good faith. You're not suggesting that the title of that land should transfer to her, are you?

1720

Ms. Carter: No. The title would be rectified.

Mr. Kormos: That's right. You're saying that the title is mine, that you cannot detract from my title regardless of how long a succession, regardless of how far I'm separated from the ultimate lawful owner, right?

Ms. Carter: In the scenario you just gave, the title would be rectified.

Mr. Kormos: In other words, my title would be maintained, my ownership.

Ms. Carter: Yes.

Mr. Kormos: Okay. So why then, if she, as a purchaser in good faith—she's not a fraud artist herself; Joe was. Why should she then be able to mortgage the land—she's doing it in good faith—and have that charge, that mortgage, attached to what is not her land but is my land? I say that she can be personally liable. That's a different issue, the debt part of the mortgage, because this doesn't deal with that, does it?

Ms. Carter: Right.

Mr. Kormos: This act doesn't deal with that part of mortgages, because a mortgage is two things. It's a charge against the land. It's also an IOU. They could sue you personally or they could take the land. We're not talking here about relieving innocent victims of fraud from having to pay off a mortgage. They have to sue the fraud artist; lots of luck.

You say there's no scenario where title would transfer. Why then are we interested in creating "knowingly"—so, as you say, to protect somebody down the road? I say no; that mortgage still shouldn't attach to the land, and you're agreeing, I think.

Ms. Carter: There has been an attempt here to balance the interests of homeowners along with the ability to rely on the land titles register. In the circumstance you just gave, all things being equal, the mortgage would likely be considered valid. Through the expedited process that the minister is hoping to introduce through this bill, compensation would flow directly to pay off the mortgage.

Mr. Kormos: You're talking about to the bank?

Ms. Carter: Yes.

Mr. Kormos: Do you mean that the bank can seek compensation?

Ms. Carter: In that case, the title would be rectified. In those rare circumstances that you've just described, the mortgage would be considered valid, and notionally, compensation would go to the registered owner so that they could pay off that mortgage.

Mr. Kormos: Thank you. I do understand, I think. I'm sure we understand. Mr. Tascona, do you understand what they're doing here? It's neither fish nor fowl. On the one hand they're saying that a bad instrument, a corrupt instrument, a forged instrument can't transfer title to land. On the other hand, they're saying that a lender, for instance, is going to get indemnified for lending money on fraudulently transferred land and can have a claim against the bona fide, legitimate landowner.

Mr. O'Toole: The fund would reimburse the banks that would have no plan. Isn't that it?

Mr. Kormos: Yes.

Mr. O'Toole: But then the fraudster gets off. Who gets to the fraudster?

Mr. Kormos: I hear you.

Mr. O'Toole: There's no recourse by the person who has the mortgage registered or the lender. The lender is paid off by the fund, I guess.

Ms. Carter: The fraud would still have occurred, and whatever right of action against the fraudster that existed wouldn't be eliminated.

Mr. O'Toole: The government would take action?

Ms. Carter: There are further motions to amend the bill. In all cases under the Land Titles Act where compensation is paid, there's an ability to transfer any rights that the applicant would have against anyone to the assurance fund. But there's some further clarification around that.

The Chair: Any other debate?

Mr. Kormos: Just very briefly, I'm wondering as well: "knowingly" holds oneself out in the instrument to be the registered owner of the estate. Now I'm being really picky; I am, at this point. I'm not usually this way, right? But I'm just interested. If Ms. DiNovo goes to the bank, she knowingly holds herself out in the instrument to be, but in fact is not.

I appreciate what you're trying to do. You're trying to attach "knowingly" to all of the language that flows, right? In other words, "knowingly" hold oneself out to be, and also "knowingly" not be the registered owner. Is this sufficiently clear—I'm just raising the issue—as to what the "knowingly" applies to? Is "knowingly" inserted here such that "knowingly" applies to "holds oneself to be the registered owner of the estate"? If Ms. DiNovo believes she is the owner, but in fact she's not, it seems to me that she fits the description either way. She knowingly holds herself to be the owner, but is not. She can't control the "is not." The "knowingly" here doesn't seem to specifically address the "but is not the owner." In other words, knowing that she is not the owner but holds herself out to be the owner, to me—do you understand what I'm saying?

Ms. Carter: I understand what you're saying, I think. I think it's adequate but I defer to legislative counsel on the question.

Mr. Wood: I'm sorry, could you repeat the question?

Mr. Kormos: No problem. Again, I don't want to belabour the point, but "knowingly"—the issue here is knowing that you are not the owner of the land, in terms of wanting to contain those people only. I'm concerned that the person knowingly holds oneself out to be the registered owner of the estate but is not. There, the "knowingly" applies, in my view, to holding oneself out to be the owner. Ms. DiNovo, as the innocent purchaser, knowingly holds herself out to be the owner, but is not the owner. She doesn't know that. So I'm wondering whether the "knowing" or "knowingly" should apply to knowledge of not having legitimate title.

Ms. Carter: That's what it's intended to do.

Mr. Kormos: I hear you, but I'm just expressing concern as to whether or not it's sufficiently clear. I'm saying that "Ms. DiNovo holds herself out to be the registered owner but knowing that she is not" is what you want to capture; right?

Ms. Carter: Yes.

Mr. Kormos: Is there a better way to do it, or is this the language? What we want to say is that Ms. DiNovo, knowing that she is not the legitimate owner, holds herself out to be the owner, rather than knowingly holds herself out in the instrument to be—it's almost as if there was a bracket there—but is not. Does the "knowingly" apply to "but is not" or is it just "knowingly hold oneself out in the instrument"?

Mr. Wood: I see the concern. "Knowingly" doesn't apply to the action of holding oneself out but applies to whether or not you consider yourself to be the registered owner.

Mr. Kormos: Yes.

Mr. Wood: Could we stand this motion down and consider it and bring it back?

Mr. Kormos: I'm not being dilatory here. Is that a fair enough proposition, that if there's a clearer way of presenting it, we should try to strive for that? Do you understand my concern about it, sir?

Mr. Wood: I do, yes.

Mr. Kormos: Yes. Thanks.

The Chair: The mover wishes to stand it down?

Mr. Dhillon: That's fine.

The Chair: Okay.

Mr. Kormos: Thank you, folks. Appreciate that. Sorry to be so obtuse.

The Chair: We move to 10.1, official opposition motion. This is also perhaps a preliminary practice for a speed reading contest somewhere.

1730

Mr. Tascona: This is a motion entitled "Measures to Prevent Fraud." This was the guts of my Bill 136, which dealt with identity theft and making sure that identity theft was removed from the system through a PIN system, through a notification, limiting the people who could register discharges and giving the land registrar the power to freeze a register.

I move that section 15 of the bill be amended by adding the following subsection:

"(1.1) The act is amended by adding the following part:

"Part I.1

"Measures to Prevent Fraud

"Limited class of registrants

"2.1(1) No person may apply for the registration of an instrument or a document unless the person is,

"(a) a member of the Law Society of Upper Canada;

"(b) a broker or salesperson registered under the Real Estate and Business Brokers Act, 2002;

"(c) a mortgage broker registered under the Mortgage Brokers Act;

"(d) an Ontario land surveyor;

"(e) a minister of the government of Canada or Ontario;

"(f) a person authorized by the council of a municipality by bylaw made under subsection 31(1) to apply to the land registrar to have land within the municipality registered; or

"(g) a financial institution within the meaning of the Office of the Superintendent of Financial Institutions Act (Canada).

"Agents

"(2) If a provision of this act allows a person to apply for registration of an instrument or a document, the provision shall be read consistently with subsection (1), namely as requiring that person to make the application through a person described in that subsection.

"Same

"(3) The land registrar shall not accept an application for registration of an instrument or a document unless the application is made through a person described in subsection (1).

"Notification

"2.2(1) Upon registering an instrument that transfers land to a new owner on or after this section comes into force, the land registrar shall send a notification to the former registered owner of the land.

"Same, charge etc.

"(2) Upon registering a charge or encumbrance in respect of land on or after this section comes into force, the land registrar shall send a notification to the current registered owner of the land.

"Same, discharge

"(3) Upon registering a discharge in respect of land on or after this section comes into force, the land registrar shall send a notification to the mortgagee whose mortgage has been discharged.

"Land registrar's powers

"2.3(1) In addition to any other power he or she has under this act, the land registrar may of his or her own accord and without affidavit,

"(a) refuse to register an instrument or a document if, in his or her opinion, the refusal may prevent fraud; or

"(b) register a caution to prevent dealing with any registered land if, in his or her opinion, the caution may prevent fraud.

"Same, reversal

"(2) The land registrar may reverse an action taken under subsection (1) if satisfied that the refusal or caution is not necessary to prevent fraud.

"Hearing

"(3) The land registrar may hold a hearing in respect of an action taken under subsection (1) before reversing the action and section 10 applies to the hearing.

"Appeal

"(4) If the land registrar does not reverse an action taken under subsection (1) or initiate a hearing within 60 days of taking the action, any person who is adversely affected may appeal the land registrar's action to the court,

"(a) within 30 days after the end of the 60-day period, in the case of a refusal to register an instrument or a document; and

"(b) at any time after the end of the 60-day period, in the case of a caution that prevents dealing with registered land.

"Personal identification numbers

"2.4(1) The land registrar shall establish and maintain a secure system that allows for personal identification numbers to be assigned to,

"(a) registered owners of land; and

"(b) registered mortgagees.

"New registrations

"(2) The land registrar shall assign a personal identification number to every person who becomes a registered owner of land or a registered mortgagee on and after the day this section comes into force.

"Existing registrations

"(3) The land registrar shall assign a personal identification number to every person who was the registered owner of land or registered mortgagee on the day this

section came into force if the person applies for one to the land registrar.

““Identification of person

“(4) A personal identification number assigned to a person under subsection (2) or (3) shall identify the person as the registered owner or mortgagee, as the case may be.

““Owner may register caution

“2.5(1) The registered owner of land may apply to the land registrar for the registration of a caution to prevent dealing with the registered land.

““Effect of caution

“(2) After a caution has been registered under subsection (1), the land registrar shall not register any instrument with respect to the land without the consent of the registered owner.

““Owner may remove caution

“(3) The registered owner of land may apply to the land registrar at any time for the removal of a caution registered under subsection (1).

““Owner must use PIN

“(4) If the registered owner of land has had a personal identification number assigned to him or her under section 2.4, the land registrar shall require the registered owner to use that number when,

“(a) indicating consent for the purposes of subsection (2); or

“(b) applying for the removal of a caution under subsection (3).

““Use of PIN

“2.6 If a registered owner of land or mortgagee has had a personal identification number assigned to him or her under section 2.4, the land registrar may require that person to use that number in any circumstances under this act if, in the land registrar’s opinion, requiring that person to use the personal identification number may prevent fraud.”

The Chair: Thank you. I apologize for this, but unfortunately I have to rule that this is outside of the scope of this bill.

Mr. Tascona: I seek unanimous consent from the committee for this motion to proceed.

The Chair: Is there unanimous consent? I heard a no.

Mr. Tascona: Recorded vote.

The Chair: Nice try. In my Chairing Committees for Dummies, it covers that in one whole chapter. It’s out of order.

That moves us to 10.2, which is the official opposition motion.

Mr. Tascona: This is dealing with changing how the land titles assurance fund is operated, to be operated by a non-government body. I’ll read the motion.

I move that section 15 of the bill be amended by adding the following subsections:

“(1.2) The act is amended by adding the following section:

“Administration of fund

“Board to administer

“54.1(1) The land titles assurance fund shall be administered by a board to be appointed by the Lieutenant Governor in Council and to be known in English as the assurance fund board and in French as conseil de la Caisse d’assurance.

“Composition

“(2) The Lieutenant Governor in Council shall appoint,

“(a) no fewer than five members to the board;

“(b) one member of the board as chair and one or more as vice-chairs who may act in the absence of the chair;

“(c) individuals who, in the opinion of the Lieutenant Governor in Council, will represent the views of,

“(i) consumer protection organizations,

“(ii) the real estate industry, and

“(iii) the law enforcement community.

“Role of chair

“(3) The chair shall have general supervision and direction over the conduct of the affairs of the board, and shall arrange sittings of the board and assign members to conduct hearings as circumstances require.

“Role of board

“(4) The board is responsible for determining appropriate payment out of the assurance fund, if any, on application by any person under this act.

“Determination

“(5) If a person makes an application under this act for payment out of the assurance fund, the chair of the board shall refer the application to one or more members of the board for determination.

“Panel

“(6) If the circumstances require a hearing, the chair shall refer the matter to a panel of no fewer than three members of the board.

“(1.3) Section 56 of the act is amended by striking out ‘director of titles’ wherever that expression appears and substituting in each case ‘assurance fund board.’”

The Chair: I know you won’t take this personally, but this amendment is outside of the scope of the bill.

Mr. Tascona: I seek unanimous consent of the committee that it be in order.

The Chair: Is there unanimous consent? I hear a no.

Mr. O’Toole: Who’s saying no to this?

The Chair: I just hear; I don’t look.

That moves us to government motion 11, Mr. Dhillon.

Mr. Dhillon: I move that section 15 of the bill be amended by adding the following subsections:

“(1.1) Subsections 57(4) and (5) of the act are repealed and the following substituted:

““Compensation from fund

“(4) A person is entitled to compensation from the assurance fund if,

“(a) the person is wrongfully deprived of land or of some estate or interest in land by reason of,

“(i) the land being brought under this act,

“(ii) some other person being registered as owner through fraud, or

“(iii) any misdescription, omission or other error in a certificate of ownership or charge or in an entry on the register;

“(b) the person has demonstrated the requisite due diligence as specified by the director if the person is wrongfully deprived of land or of some estate or interest in land by reason of some other person being registered as owner through fraud;

“(c) the person is unable under subsection (1) or otherwise to recover just compensation for the person’s loss; and

“(d) the person makes an application for compensation within the time period specified in subsection (5.1).

“Earlier payment

“(4.1) A person who is a member of a prescribed class of persons is entitled to compensation from the assurance fund if,

“(a) one of the following conditions is met:

“(i) the person is wrongfully deprived of land or of some estate or interest in land or has not received land or some estate or interest in land by reason of the registration of an instrument described in clause (13)(b) and the director of titles or a court, under that clause, has directed that the registration of the instrument be deleted from the register,

“(ii) the person is wrongfully deprived of land or of some estate or interest in land or has not received land or some estate or interest in land by reason of a rectification of the register made under clause (13)(a) or (b);

“(b) the person has demonstrated the requisite due diligence as specified by the director with respect to the instrument that is the subject of the rectification; and

“(c) the person makes an application for compensation within the time period specified in subsection (5.1).

1740

“Same

“(4.2) A person who is a member of a prescribed class of persons is entitled to compensation from the assurance fund if,

“(a) the director of titles or a court, under clause (13)(b), has directed that the registration of an instrument described in that clause be deleted from the register;

“(b) the person has suffered a loss as a result of the deletion described in clause (a); and

“(c) the person has an application for compensation within the time period specified in subsection (5.1).”

Chair, I'd like to go back. I'd like to just make a correction in the section where it states “Earlier payment.” I'll just reread (ii) to correct that.

“(ii) the person is wrongfully deprived of land or of some estate or interest in land or has not received land or some estate or interest in land by reason of a rectification of the register made under clause (13)(a) or (c).”

I stated “(b)” before, so that's a correction. Further down, another correction under “Same”:

“(c) the person makes an application for compensation within the time period specified in subsection (5.1).”

Continuing:

“Reliance on automated index

“(5) A person who suffers damage because of an error in recording an instrument affecting land designated under part II of the Land Registration Reform Act in the parcel register is entitled to compensation from the assurance fund if the person makes an application for compensation within the time period specified in subsection (5.1).

“Time for application

“(5.1) A person claiming to be entitled to the payment of compensation under subsection (4), (4.1) or (5) shall make an application within six years from the time of having suffered the loss described in the applicable subsection or, in the case of a person under the disability of minority, mental incompetency or unsoundness of mind, within six years from the date at which the disability ceased.”

“(1.2) Subsection 57(7) of the act is repealed and the following substituted:

“Hearing

“(7) Except if he or she determines the claim be paid in full, the director of titles may hold a hearing, and the claimant and the other persons that the director of titles specifies are parties to the proceeding before the director.”

“(1.3) Section 57 of the act is amended by adding the following subsection:

“Recovery of compensation paid in error

“(11.1) If, after compensation is paid out of the assurance fund, the director of titles determines that any part of the compensation was paid in error for any reason, including on the basis of any misrepresentation or any lack of information available at the time of making the payment, the director of titles may commence an action to recover the amount of that part from the person who received it.”

“(1.4) Subsection 57(12) of the act is repealed and the following substituted:

“Subrogation

“(12) If any amount is paid out of the assurance fund to an applicant in respect of a loss, the director of titles is subrogated to the right of the applicant and the applicant's heirs, executors, successors and assigns to recover compensation or damages from any person in respect of the loss, and the certificate of the director of titles of the payment out of the assurance fund is sufficient proof of the payment.

“Agreements

“(12.1) For the purposes of subsection (12), the director of titles may enter into agreements with any person or body that is liable to make any payment to a person who has received compensation from the assurance fund if the liability arises out of conduct that gave rise to the payment made from the assurance fund.”

The Chair: Thank you. Would there be any debate?

Mr. Tascona: —House leader here with me, but be nice.

Mr. Kormos: Then why don't you yield the floor to me for a couple of minutes?

Mr. Tascona: Yes.

The Chair: Mr. Kormos was actually first.

Mr. Kormos: Thank you, Chair. I think it's time I read from the letter of December 5, 2006, by Minister Gerry Phillips to members of the standing committee on social policy. I'm going to give you a copy of the letter. I want it to form part of the committee's record.

"Streamlined land titles assurance fund

"Proposed amendments to the Land Titles Act would implement a streamlined and expedited LTAF process for individuals who are victims of fraud. The proposed amendments would put the necessary statutory framework in place for the director of titles to order LTAF payments, provide powers to the director to investigate fraud and provide the ability to recoup these payments from third parties in appropriate situations.

"The amendments would streamline the application process for compensation from the LTAF, thereby reducing the burden on the innocent victim of real estate fraud. Innocent victims of fraud should not be made to go through a long and onerous process to be compensated.

"In addition, the ministry will administer existing claims to the LTAF in the spirit of the new streamlined process and in the most expeditious manner possible. In this regard, there are some recent cases of fraud that have been widely reported where no claim has been made to the LTAF. These cases may be eligible for the expedited LTAF process."

I accept the minister's word on this. So this, I trust, is the motion that reflects the statement of the minister in his letter to members of the committee. I would ask for assistance in clause (4)(c), "the person is unable under subsection (1) or otherwise to recover ... compensation...." That makes reference to—my apologies.

Ms. Carter: Mr. Kormos, subsection (4) would relate to claims that wouldn't fall under the prescribed class. So claims to the assurance fund are made with respect to fraud but also with respect to errors. For example, errors would still be processed through the regular process.

Mr. Kormos: Which means it's not the streamlined process?

Ms. Carter: Right. So in the case of—

Interjections.

Mr. Kormos: Get that gavel out, Chair.

Ms. Carter: So in the case of the non-streamlined process, basically this codifies what was existing in the act already.

Mr. Kormos: Okay. So we're not dealing with a streamlined process here?

Ms. Carter: No.

Interjection: Not there, but (4.1) and (4.2) do.

Mr. Kormos: Okay. Good. So I don't have to concern myself at this point with subsection (4). Let's move on to (4.1). Help me to understand these because this is the first time I've seen these—sort of on the fly.

Ms. Carter: Do you just want me to carry you through?

Mr. Kormos: Yes. "Prescribed class of persons": So this doesn't have the prerequisite for seeking alternative compensation in (4.1)?

Ms. Carter: That's right.

Mr. Ramal: Which point?

Mr. Kormos: It's (4.1), page 2 of the amendment.

Mr. Ramal: Okay.

Mr. Kormos: So this is the streamlining and this is intended to be retroactive in that it says, "if the person is wrongfully deprived of land." Right? That means, subject to limitation periods, any person in the province of Ontario who's deprived of land or an interest in land is entitled to access (4.1).

Mr. Dhillon: Chair, I'd like to request, according to standing orders, a five-minute recess.

Mr. Kormos: That's just a request.

Mr. Dhillon: Can we have a recess, please, according to standing orders?

Mr. Kormos: You have to ask me. Unanimous consent for a five-minute recess.

The Chair: Is there unanimous consent for a five-minute recess? Agreed.

The committee recessed from 1750 to 1757.

The Chair: We're back in session. Additional debate? Mr. Tascona?

Mr. Tascona: We're dealing with the land titles assurance fund. I'll put the question to our legislative counsel, Mr. Wood. A number of amendments have been put forth by the government with respect to revising and reforming the land titles assurance fund, put forth by Mr. Phillips. Is this reform system going to be retroactive before October 19, 2006?

Mr. Wood: I can attempt to give you an answer to that question, but in fairness, it should be confirmed by ministry staff as well, since the ministry has been—

Mr. Tascona: Okay. Well, ministry staff—

Mr. Wood: But that is my understanding, that it all hinges on the definition of—

Mr. Tascona: Clause 57(13)(b)?

Mr. Wood: Exactly, subsection 57(13).

Mr. Tascona: In my reading of it, it's still a document registered on or after October 19, 2006. So this is prospective legislation from October 19, 2006. It's not going to help people like Susan Lawrence, Elizabeth Shepherd or Paul Reviczky, is it?

Mr. Wood: Well, a streamlined process—the earlier payment of compensation would not be available for an instrument registered before October 19.

Mr. Tascona: Does the ministry staff confirm that?

Ms. Carter: I think the minister said in his correspondence that any existing claims would be processed in the spirit of the legislation.

Mr. Tascona: Well, it says—

Mr. O'Toole: "These cases may be eligible for the expedited LTAF process."

Mr. Tascona: Page 2: "In addition, the ministry will administer existing claims to the LTAF in the spirit of the

new streamlined process and in the most expeditious manner possible. In this regard, there are some recent cases of fraud that have been widely reported where no claim has been made to the LTAF. These cases may be eligible for the expedited LTAF process.” What does “may be eligible” mean?

Ms. Carter: If the person fits into a prescribed class, then, as I understand the legislation, they may fit under the provisions of (4.1) and/or (4.2).

Mr. Tascona: Would Susan Lawrence be eligible?

Ms. Carter: I can’t speak to a specific case. I’m sorry.

Ms. Murray: We can’t speak to specific cases, but in—

Mr. Tascona: There is a representation here by the minister to this committee: “[T]here are some recent cases of fraud that have been widely reported where no claim has been made to the LTAF. These cases may be eligible for the expedited LTAF process.” I don’t know what the minister is saying about recent cases. I don’t know who drafted this for him, but he signed it. Do you have any knowledge of what recent cases of fraud he’s referring to?

Ms. Murray: Mr. Tascona—

Mr. Tascona: That’s the question. Can you answer that question?

Ms. Murray: I’m going to answer the question. What is being referred to are situations where—people are talking of different types of fraud, and in situations where court applications have been made, as has happened in many cases, where that title has been rectified and the fraud has been proved, those applicants can come to the fund and, based on the fact that a fraud has already been proved, it is within the discretion of the hearing officer to pay compensation on an expedited process.

Mr. Tascona: For something that happened prior to October 19, 2006?

Ms. Murray: If the fraud has been proved, yes.

Mr. Tascona: Where does that say that in the language? Show me.

Mr. O’Toole: My reading was the same. I thought they were addressing current cases that may not be before the courts. If the person has to go to court—if the fraud has been perpetrated on me and I have to go to court and spend money to prove that and then be expedited in how I get paid off, this isn’t really saving those who have been caught in this.

Ms. Carter: If you’re asking a question, the current bill provides a power for the director of titles to rectify title, and that’s not a court process.

Mr. O’Toole: Yes. The current cases, the three or four that have been in the media over the last few months, may not be before the courts. Are they covered?

Ms. Murray: It’s difficult, because it’s a tribunal that we’re talking about in terms of the land titles assurance fund. But generally, in the cases that have been spoken of recently, court orders have already been received to rectify title. So the issue is whether or not the compensation is payable. If they come to the fund, then the fund

has the discretion to determine when compensation is paid.

Mr. O’Toole: Would they be entitled to their legal costs?

Ms. Murray: Yes.

Mr. O’Toole: They would. I’m satisfied.

Mr. Tascona: Back to that point: I don’t agree that this is going to protect Susan Lawrence and the other people, because the language doesn’t say that. Everywhere throughout these amendments it talks about “on or after October 19, 2006.” Quite frankly, I think the language is going to have to be clearer. I’ll deal with it later, but that’s my position at the moment.

Ms. Murray: Mr. Tascona, in situations where a court order has already been received to rectify title, as has happened in many of the cases that have been spoken about, then they can come to the fund and we can process it expeditiously, even under the old provisions.

Mr. Tascona: That’s rectifying title. What about rectifying a mortgage fraud?

Ms. Murray: Well, the compensation would be with respect to paying out whatever document was on the title fraudulently.

Mr. Tascona: But the law, when Susan Lawrence went to court on November 28, was that—I don’t know whether she won that case. I believe she lost, because it was a registered document; even though it was fraudulent, it was registered, so the Court of Appeal upheld it. That wasn’t rectified. Her title may have been restored, but the mortgage stood. So that wouldn’t help her with respect to the mortgage.

Ms. Carter: The claim for compensation is made with respect to a valid mortgage under existing law. The amount of money necessary to pay out the mortgage would likely be compensable.

Mr. Tascona: How’s that if it’s a valid mortgage?

Ms. Carter: All I can say is that under the existing process, there have been circumstances where a fraudulent mortgage was obtained and the homeowner was compensated to pay off the mortgage.

Ms. Murray: So in the fact situations similar to Ms. Lawrence’s, if that party came to the fund they would in all likelihood be compensated for that mortgage. In other words, they would be given the money to pay out that fraudulent mortgage whether or not the hearing before the Court of Appeal addresses it.

Mr. Tascona: Predicated on the fact that the title was rectified.

Ms. Murray: In those situations and in that situation, the title has already been rectified.

Mr. Tascona: Okay. I hear you.

Mr. Kormos: I understand that what we’re trying to do is to reconcile the amendments with the commitment made in the Phillips letter of December 5. That’s our goal here. I understand now—you dealt with subsection (4). That’s not an accelerated compensation process. “Earlier payment” is the subheading. That’s the accelerated process. Now, a “prescribed class of persons” means that, by regulation, they’re going to identify the type of victim

who will be entitled even to consideration. That's going to be the entry point for people to the (4.1) compensation scheme: whether or not you fall within the class of persons prescribed within the regulations.

Ms. Murray: That's correct, yes.

Mr. Kormos: We don't know what that is yet. That could, for instance, address retroactivity. I'm then getting into (5.1) and the six-year limitation period, which is applicable to (4.1) and (4.2).

Ms. Murray: The "prescribed class of persons" is intended to cover homeowners and innocent purchasers for value. That's what the intent is.

Mr. Kormos: That's what you believe the regulation will prescribe.

Ms. Murray: Yes.

Mr. Kormos: That reg is not there yet, but that's what's intended, at least from your perspective. Okay. So help us again. That was two groups of people: homeowners and—

Ms. Murray: Homeowners and innocent purchasers for value.

Mr. Kormos: How does that jibe with the six-year limitation period? Because these people, even if they are in the "prescribed class of persons," still have only six years in which to make application from the time of having suffered the loss. That's interesting. You can suffer the loss by virtue of registration of a document, and it's not inconceivable—I'm trying to run this through—that it would take more than six years to discover that you've suffered that loss, notwithstanding that no subsequent document can take away from an earlier valid title. So there's no loss through a subsequent document. Why is there a six-year time limitation? It doesn't deal with the—or is it inherent in the six-year time limit? No, it isn't, because this isn't in the Limitations Act. So we don't have the principle of when you first became aware of the loss. We don't have that applying here.

Mr. Wood: No. In fact, subsection (5.1) in the motion restates what is already in section 57 of the act.

Mr. Kormos: But I'm correct in pointing out that it's only the Limitations Act that has the provisions whereby the limitation period may run from when you first became aware.

Mr. Wood: That's correct.

Mr. Kormos: And this is very clear that it doesn't incorporate that. Am I correct in that analysis?

Mr. Wood: That's correct.

Mr. Kormos: So this is a hard, hard, hard six-year limitation period. I don't even see any discretion on the part of anybody to extend the period here. There's nothing here. In the Limitations Act—I don't know whether the new Limitations Act has that, where courts can exercise discretion.

Mr. Wood: I'd have to check the act. I can't answer that.

Mr. Kormos: But in any event, there's no discretion permitted here. It's a hard six-year limitation period. How do we reconcile that with the nature of the frauds that take place here and the fact that it's not unrealistic

to—look at the old fella, the senior citizen, the 82-year-old Hungarian—

Ms. Murray: In the fact situations of the frauds that we usually see, Mr. Kormos, it certainly doesn't take that long for those to be discovered.

Interjections.

The Chair: Order. People need to hear the answer, please.

Ms. Murray: That's not an issue.

Mr. Kormos: You're saying it's not an issue.

Ms. Murray: The frauds are discovered well within the limitation period. That is not an issue.

Mr. Kormos: I suppose there are going to be arguments about when you suffered the loss. You suffer a loss when your title is denigrated or corrupted, but you don't know the loss yet. It's like the Nortel stock you might still own. You don't suffer the loss until you actually sell it, but in fact, if you saw it do the dead cat bounce, you've suffered a loss, right? So there are going to be arguments about that.

Let's get back, though, to the Susan Lawrences. The minister talks in his letter about people who have been defrauded but who haven't made claims yet because they're caught up in that initial phase of going through the civil courts. So these are people who have not made claims yet.

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Ms. Carter: Or they've just not made an application because they chose not to.

Mr. Kormos: Fair enough. Point us to the language here—this is what Mr. Tascona was trying to get to—that would permit and reconcile this with "registered on or after October 19, 2006."

Ms. Carter: As far as I understand it, that wording relates to the definition of "fraudulent instrument." Provisions dealing with earlier payment aren't related to that.

Mr. Kormos: So October 19 only deals with rectification of registry?

Mr. Wood: The reference to the registration of an instrument on or after October 2006 appears in subsection 57(13).

Ms. Carter: And 78(4).

Mr. Wood: Yes.

Mr. Kormos: So the October 19, 2006, date is relevant only with respect to what actions?

Ms. Carter: Relevant to what constitutes a fraudulent instrument and a fraudulent person, and section 78 deals with—

Mr. Kormos: All right. But having said that, with respect, so what? Fraudulent instrument, fraudulent person, for the purpose of what? For the purpose of rectifying title, or for the purpose of prosecuting?

Mr. Wood: We're looking now, in this motion, at 57(4.1), the earlier payment procedure. Since one of the conditions there is that you have had the registration of an instrument deleted, it has been deleted under 57(13)(b) that contains a specific reference to the registration date. The way I would interpret this is that the process for

earlier payment from the fund is only legally available with respect to—

Interjections.

Mr. Kormos: Please, it's awful hard to hear at the best of times in this room. This is important stuff.

Mr. Wood: As I interpret this—and this would have to be confirmed by ministry staff—the right in subsection (4.1) to earlier payment from the fund is only available with respect to an instrument registered on or after October 2006. That is to say it is only legally available. Strictly speaking, do you have that right? I can't comment as to whether the fund might be satisfied under, for instance, subsection (4) that the claimant has satisfied the obligation to show that he or she has exhausted other legal remedies and therefore comes within that subsection. I'm just speaking on the very narrow point as to whether you have a right under (4.1) to get the earlier payment from the assurance fund.

Mr. Kormos: Thank you, sir.

Ms. Murray: And the tribunal is entitled to set policy with respect to determining what it needs as evidence, and the minister has already said we would be streamlining those applications as well. In terms of situations where a fraud had been proved by court order and the title rectified, they would be able to come to the fund for compensation.

Mr. Kormos: If I can summarize where we're at, I think everybody agrees that the October 19, 2006, is an operative date for when (4.1) kicks in. That's the streamlined compensation. I'm hoping everybody is on the same page in that respect. That's number one. Number two, you say that the assurance board or tribunal has the capacity to set some of its own standards, and I'd say the board or tribunal is bound by the legislation. That takes me to, what is the legislative authority for the board-tribunal that grants compensation to overlook the statutory provision of October 19, 2006, as being the initiation date for the streamlined compensation?

Ms. Murray: Mr. Kormos, the hearing office or the tribunal, the land title assurance fund, would not be overlooking the legislation; it would be establishing the criteria of the act, whether or not they had been able to recover compensation. That's within the discretion of the hearing officer, based on the facts. In the situations I've described, the person would in all likelihood be able to come forward for compensation.

Mr. Kormos: May I ask, does the ministry issue directives to the tribunal?

Ms. Murray: The assurance fund is in the process of issuing full guidelines in this regard, in terms of the evidence that needs to be brought forward.

Mr. Kormos: But does the government issue interpretive directives to the tribunal? We see that any number of ministries do that.

Ms. Murray: The director of titles issues those.

Mr. Kormos: This is just a general question: In this particular area of government, does the ministry issue interpretive bulletins, directives—

Ms. Murray: The director of titles issues interpretive bulletins throughout the administration of the Land Titles Act.

Mr. Kormos: So the minister doesn't?

Ms. Murray: The director of titles does.

Mr. Kormos: So the minister doesn't?

Ms. Murray: No, the director of titles does.

Mr. Kormos: You're being very careful. Are you being careful or—

Ms. Murray: No, I said no, the director of titles does.

Mr. Kormos: So the minister doesn't issue directives?

Ms. Murray: That's correct; the director of titles does.

Mr. Kormos: Thank you.

Chair, if I may, and I put this to the parliamentary assistant, that puts us in a bit of a dilemma here, and let me tell you why. Even if the minister says, as he does here, that there will be discretion exercised to admit the Ms. Lawrences of Ontario to the streamlined process, we've learned that it is not the minister who issues directives or bulletins to the tribunal; it's the director. So the minister can say anything he wants, but there has been no suggestion that he can bind the director by virtue of—look, I have no reason to disbelieve Mr. Phillips. I believe him to be an honourable man. But I'm worried that we haven't established any authority by the minister over the director. There's no suggestion—as a matter of fact, it has been explicitly declared that the minister doesn't issue directives about these things, that the ministry doesn't issue directives about these things, that the government doesn't issue directives about these things but that it's the director of titles.

Ms. Murray: Mr. Kormos, the director of titles issues the directives under the spirit of what the government's objectives are. In terms of the streamlining, we've already announced that we would be streamlining that, and the streamlining actions I have just articulated are what will be moving forward.

Mr. Kormos: And that's a fair enough comment. So you're indicating that the director will feel bound by the policy declaration of the government with respect to pre-October 19, 2006.

Ms. Murray: The hearing officers apply the statute. In applying the statute, one has to determine the facts of each of the cases depending on what is needed to be proved to show that there's a fraud. In most cases, a court order is sufficient, and then one has to bring forward information to the hearing officer with respect to what compensation should be paid.

Mr. Kormos: I appreciate that, and thank you, because that's dealing with the existing hurdle, as it has been referred to: the need to pursue all other avenues first. It's dealing with that. But let's deal with the access—because I don't know when Ms. Lawrence's case dates from but I know that it dates prior to October 19, 2006. I hear you in that regard, in terms of the discretion around the area of whether or not a person has laid the proper foundation. I hear you. I accept that. I have no quarrel with that. I can't quarrel with that. I have no

reason to. But I'm still disturbed, because the discretion that you're talking about has nothing to do with the October 19, 2006, genesis of the 4.1 streamlined process. You need to have a document registered after October 19, 2006, before you can access 4.1. The de facto victims, the existing victims out there, inevitably—some of them well known because of Harold Levy and his journalism—are going to predate October 19, 2006.

I don't know what the minister's assurance then means, because the minister's assurance can't extend to meaning people whose documents that victimize them predate October 19, 2006. That's my problem.

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Ms. Murray: I'm not really sure of your question, Mr. Kormos, but the process before a hearing officer under the existing legislation provides that the hearing officer has to be satisfied that a fraud has occurred and then has to be satisfied with respect to what compensation is required and that they're otherwise unable to recover. So in situations even under the old process, a court order that said there was a fraud and rectified the title, which has happened in many of the cases, would in all likelihood—and in most cases has been fine, has been the evidence required. In those cases, the fraudster is also unknown, so that then you address the issue of being otherwise unable to recover and therefore you would come forward.

So with respect to that, that is the spirit of the expedited process. Therefore, we can administer the fund in that manner.

Mr. Kormos: Thank you, ma'am. I'm not going to belabour this. Thank you very much for your patience with me.

But I do want to say this in closing: I will not vote for this amendment, and I'll tell you why. The amendment in and of itself is fine, but for the fact that the amendment doesn't incorporate legislatively the commitment that the minister has made. I hear the comments being made by staff and appreciate them, but I'm still concerned about people being squeezed out. That troubles me a great deal. We talked about that. We know there are a finite number of cases. The outstanding potential claims are relatively finite. There are only maybe one or two that aren't discovered yet, in terms of a reasonable period of time. So it's not as if we're opening the floodgates, where poor Greg Sorbara is going to have to start writing personal cheques. It's containable, it's measurable. As a matter of fact, it can probably be quantified.

Last time I was here with the committee, I asked for some input as to the total value of outstanding claims. In other words, if the assurance fund paid out to everybody who has an outstanding claim as of today, how many millions of dollars would that take? We haven't got a response. That's fair enough.

I just find this, I say to the government committee members, incredibly disappointing. All I'm saying is, I won't support it because I don't want to be a party to it. I'm not going to vote against it because the amendment in and of itself is a good amendment but for the fact that it doesn't draw Ms. Lawrence necessarily into the speedy

compensation scheme. I think that's truly regrettable. You people are missing a lost opportunity.

Don't you remember the Dionne quintuplet settlement? Mike Harris was brilliant on that. It whirled around and whirled around and started nipping him on the heels. Remember that, Mr. Tascona? And Harris finally said, "Just settle it." The bad press—because there was this huge emotional support for the surviving Dionne quintuplets and Harris clearly exercised his—he said, "Just settle it," because he didn't need the grief.

I say to you, all you need is two Susan Lawrences buzzing around the province during the next provincial election campaign. She could cause so much grief politically for the government—trust me. You saw her. She's articulate, she's intelligent, she's sympathetic. Man, oh man. I don't understand. You could have simply made it clear with one sentence that all outstanding claims will be considered for the speedy process. As I say, it's measurable. There you go. It's just frustrating.

The Chair: You're done, Peter?

Mr. Kormos: Yes, sir. Thank you.

The Chair: Thank you for your brief comments. Mr. O'Toole?

Mr. O'Toole: I hope not to be repetitive. I'd only say that I think what we're faulting here is that this bill is being amended because it wasn't structured to prevent these frauds, for a variety of reasons. Some of it could be just Teranet and electrifying the system; I don't know. But when I look at this, the due process has to have occurred before this fund clicks in, somehow. Even the language states—I'm looking at subsection 15(2), clause (b). As well, I go further down to (16)(b): "the person demonstrated the requisite due diligence as specified by the director." In other words, the director said you should be doing certain things to ensure—I'm down a little further than this. But it's the same process that we're talking about. It's up to me to demonstrate—that means I have to go to court, I have to get a lawyer, I have to sort it all out—some due diligence, and the director has to be satisfied that this has been resolved by the court or by some process.

Is this before a hearing? How do I get to a hearing? I'm just a normal consumer, Susan or whoever.

Ms. Carter: In response to your question, this provision relates to—I guess I have to give you a little bit of background. The bill as it is now creates a situation where a fraudulently obtained mortgage—so a situation where a fraudster transferred the property to themselves and then went out and got a mortgage. Under the existing legislation, the person would be considered the registered owner and the financial institution would be able to rely on the fact that the person was the registered owner. So under the new legislation, where a fraudulent person goes out and gets a mortgage, in that case, the mortgage would be void.

An additional avenue for compensation is being offered to mortgagees in those cases. If they come forward, notwithstanding the fact that they dealt with a fraudulent person, their interest is now not valid. But not-

withstanding the fact that they dealt with a fraudulent person, they may be able to demonstrate for the hearing officer that they exercised the requisite due diligence in granting the mortgage.

Mr. O'Toole: Like a power of attorney or some other document?

Ms. Carter: Or maybe the person was pretending to be the registered owner and they had fake ID that was really well produced, maybe they did a drive-by appraisal—any number of things.

Ms. Murray: Or there would have been some other validation, an appraisal, but then the fraudster managed to—I mean, they took the steps necessary to try and validate that it was the proper party. They may then have shown requisite due diligence, they may then be eligible for an application for compensation.

Ms. Carter: For example, in the case of tenant fraud, there may be a person posing as the registered owner.

Mr. O'Toole: They're the tenant and they're acting as if they're making payments or whatever, but they've actually registered a mortgage on the title of a rented property. It could be any number—I understand—

Ms. Carter: It could be any number of things. If the person in the circumstances is able to demonstrate that they showed some due diligence, the requisite due diligence, they may be eligible for compensation. In the case of the homeowner, that wouldn't apply because the title would be rectified. If the instrument was void, it would come off the title and the homeowner would merely be coming to the fund to be reimbursed for whatever costs they incurred in the process of having their title rectified.

Mr. O'Toole: I just remember, very briefly—and I'm not qualified in the area as would be Joe and Peter, but my sense is that since we've made this more convenient through Teranet and other systems, being able to electronically do much of this stuff, the system seems to have some weakness in preventing these growing. I think fraud is beyond just the specific debate here. There are people who will figure this one out, and you won't know who the fraudster is—

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Mr. Ramal: On a point of order, Mr. Chair: I think it's a political question, so I don't want to put the staff—if there are any technical questions, I think the staff are willing to do it, but we don't want to put them in a position to tackle political issues. The difference between—

Mr. O'Toole: Chair, I had the floor, and I resent the implication. This is not political. In fact, you're ignoring the constituents you're elected to represent, so don't presume to lecture me when you don't know anything of what you're talking about.

The Chair: Whoa.

Mr. O'Toole: He was being rude to me.

Mr. Kormos: We're trying to make progress on this bill, Mr. Ramal.

Mr. O'Toole: He was being rude to me, and that's completely inappropriate.

I'm saying that in the last several years this has become an important issue for people. When Teranet was

formed and they started to electronically register these things, I believe the current legislation—this is an admission—is not able to handle that. They're trying to develop a system so that innocent consumers don't have to go to the courts, spending \$50,000, to try and re-establish their own title on their own property. That's what this is about, and if you aren't interested, you shouldn't even be on this committee.

I'm insulted by your remarks, Mr. Ramal. I am going to send this comment of yours to your constituents. It's the same as the greenfield dump site. You didn't say a word on that either. So if you want to be political, I'll give it to you.

The Chair: Please. I'd like a little decorum. Every once in a while when I wonder whether I've made the right decision to not run again, this sort of thing confirms it. If there are any political questions, I'm sure the parliamentary assistant would be pleased to answer them.

Is there any further debate? Then I call the question. Those in favour of the amendment, government motion number 11? Those opposed? The motion is carried.

That brings us to PC motion 11.1

Mr. Tascona: Yes. This makes the fund a fund of first resort. That was the intent of what's out in New Brunswick and other areas, that the land titles assurance fund be the fund of first resort.

I move that section 15 of the bill be amended by adding the following subsection:

“(1.4) Subsection 57(4) of the act is repealed and the following substituted:

““Compensation from fund

“(4) A person wrongfully deprived of land or of some estate or interest in land is entitled to have compensation paid out of the assurance fund if the application is made within six years from the time of having been so deprived or, in the case of a person under the disability of minority, mental incompetency or unsoundness of mind, within six years from the date at which the disability ceased.

“Clarification

“(4.1) For greater certainty, a person entitled to have compensation paid out of the assurance fund need not take any steps to recover just compensation under subsection (1) before applying for compensation from the fund.”

The Chair: Discussion?

Mr. Kormos: New Democrats believe that this amendment recreates the fund in the manner in which it is intended to exist and better articulates an efficient and speedy access to compensation for innocent victims of fraud than the government proposal. New Democrats will, of course, be supporting the amendment.

The Chair: Any other discussion?

Mr. Tascona: Recorded vote.

Ayes

Kormos, O'Toole, Tascona.

Nays

Dhillon, Fonseca, Kular, Leal, Ramal.

The Chair: The amendment is lost.

That moves us to PC motion 11.2.

Mr. Tascona: This is dealing with the change in the compensation of the fund, making it very clear how people will be compensated, the amount and the fact that they will be paid their reasonable legal fees, unlike what the government is proposing.

I move that section 15 of the bill be amended by adding the following subsections:

“(1.4) Subsection 57(4) of the act is repealed and the following substituted:

“‘Compensation from fund

“(4) A person wrongfully deprived of land or of some estate or interest in land is entitled to have compensation paid out of the assurance fund if the application is made within six years from the time of having been so deprived or, in the case of a person under the disability of minority, mental incompetency or unsoundness of mind, within six years from the date at which the disability ceased.

“‘Clarification

“(4.1) For greater certainty, a person entitled to have compensation paid out of the assurance fund need not take any steps to recover just compensation under subsection (1) before applying for compensation from the fund.’

“(1.5) Subsection 57(6) of the act is amended by striking out ‘director of titles’ and substituting ‘assurance fund board.’

“(1.6) Subsections 57(7) to (10) of the act are repealed and the following substituted:

“‘Hearing

“(7) Except if the member or members who consider the application determine that the claim be paid in full, the chair of the assurance fund board shall order a hearing be held, and the claimant and the other persons that the chair specifies are parties to the proceeding.

“‘Determination of compensation

“(8) The panel of members of the assurance fund board assigned to hear the application shall determine the liability of the assurance fund for compensation and the amount of compensation.

“‘Amount of compensation

“(8.1) The amount of compensation may cover,

“(a) the value of the land or estate or interest in land of which the person was wrongfully deprived; and

“(b) reasonable legal costs associated with making a claim for compensation out of the fund, including costs associated with a hearing under subsection (7).

“‘Notice to claimant

“(9) The panel of the assurance fund board shall serve notice of its determination under subsection (8) by registered mail on the claimant.

“‘Appeal

“(10) If the panel of the assurance fund board determines that compensation should be paid but that the

claim not be paid in full, the claimant, if intending to appeal, shall, within a period of 30 days after the date of mailing of the notice under subsection (9), serve on the chair of the board notice of intention to appeal under section 26, and the chair shall not certify under subsection (11) the amount to the Treasurer of Ontario if a notice of appeal is received within that period or until after the expiry of that period if no notice of appeal is received.’

“(1.7) Subsection 57(11) of the act is amended by,

“(a) striking out ‘director of titles shall certify’ and substituting ‘chair of the assurance fund board shall certify’; and

“(b) striking out ‘director of titles’ certificate’ and substituting ‘chair’s certificate.’

“(1.8) Subsection 57(12) of the act is amended by,

“(a) striking out ‘name of the director of titles’ and substituting ‘name of the chair of the assurance fund board’; and

“(b) striking out ‘director of titles’ certificate’ and substituting ‘chair’s certificate.’”

The Chair: Thank you. I would like to espouse to you Parsons’s theorem, which says, “The longer an amendment, the greater the chance it is out of order.” This motion is dependent on (10.2), which was ruled outside of the scope of this bill. So this one is also out of order.

Mr. Tascona: Unanimous consent to be in order?

The Chair: Is there unanimous consent to accept this? I heard a no.

Mr. Tascona: I’m losing my goodwill here. The House leader may want to come back.

The Chair: Government motion number 12.

Mr. Dhillon: I move that subsection 57(13) of the Land Titles Act, as set out in subsection 15(2) of the bill, be amended by adding “Subject to subsection (13.1)” at the beginning.

The Chair: Any debate?

Mr. Tascona: No. Put it to a vote.

The Chair: Okay. Those in favour? Opposed? Carried.

Government motion 13.

Mr. Dhillon: I move that clause 57(13)(b) of the Land Titles Act, as set out in subsection 15(2) of the bill, be struck out and the following substituted:

“(b) the director of titles or a court, as the case may be, is satisfied, on the basis of evidence that the director of titles specifies or the court orders, that a fraudulent instrument has been registered on or after October 19, 2006; or”

The Chair: Debate? Mr. Tascona first.

Mr. Tascona: That’s the crux of the issue—before I transfer over to my friend Mr. Kormos. October 19, 2006, is the problem. I don’t care what anyone says, the thing is, the director of titles has to apply the statute. If he doesn’t apply the statute, they’re out of the jurisdiction. So what I would propose is a friendly amendment, if I can do that now, to change the date from October 19, 2006, to January 1, 2003, because that’s when all the action started with respect to the court cases and the

flurry and, quite frankly, the inaction by the government. So my amendment is “January 1, 2003,” and if that is really the intent of the government to make sure that this is retroactive, this will crystallize it and bring it clearly in force.

The Chair: We now will do debate on Mr. Tascona’s amendment. Mr. Kormos, on the amendment to the amendment.

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Mr. Kormos: Consistent with the notice of motion that I filed with the clerk, Mr. Tascona, I amend your amendment by deleting “2003” and substituting “1996.”

The Chair: We have an amendment to the amendment presently, so we cannot accept another amendment.

Mr. Tascona: I’ll withdraw my amendment for his amendment. May I withdraw mine for his?

I haven’t seen your amendment. It’s January 1, 1996? Okay. I withdraw for that amendment.

Mr. Kormos: I move, then, that government motion number 13 be amended by deleting “2006” and substituting “1996.”

Thank you, Mr. Tascona.

The Chair: Debate on Mr. Kormos’s amendment?

Mr. Kormos: It clearly extends the time frame 10 years. As Mr. Tascona suggested in his somewhat more conservative proposal, which is to be expected, of course, it’s the time frame within which most, if not all, of any outstanding frauds are likely to be reported. It may well also still be subject to the six-year limitation period, so even though the operative date is 1996, the six-year limitation period would still apply. But of course the limitation period only kicks in when the loss is suffered. The six-year limitation period doesn’t necessarily restrict you to, let’s say, 2000, even though the existing bill wouldn’t restrict you to 2000 because the six-year limitation period would only be moving forward and not collect anything that predated October 19, 2006.

It’s a modest proposal. If the government is serious about what it intends to do, then on this one I would ask your support for the modest proposal of Mr. Tascona and myself.

Mr. Dhillon: I just want to point out that government bills typically are not retroactive because of obviously unintended circumstances. People can apply for compensation under the streamlined LTAF process for the victims before October 19.

Mr. O’Toole: I think the point we’re all trying to make is that we want to make sure that those persons in recent times—maybe this is a bit too long; maybe Mr. Tascona’s date was more accurate. There seems to have been an increase in the vulnerability of people’s access to title or those mortgagees who might be finding themselves—I don’t know what the statistics are. Is it increasing? Is there a problem?

Ms. Murray: The number of applications to the fund with respect to fraud has been, on average, 10 for the last number of years.

Interjection.

Ms. Murray: Yes, it’s over the last 10 years.

Interjection.

Mr. Tascona: Mortgages?

Ms. Murray: I think the issue with respect to mortgage fraud is that the industry itself is having trouble quantifying, and it doesn’t relate to the title, because it’s typically value flips or people giving false information to financial institutions about their financial wherewithal. It’s not related to the title.

Mr. Kormos: It seems to me, as I recall it, that the government legislation repealing the private school tax credit was pretty darned retroactive. Far more important is the message that the parliamentary assistant just delivered on behalf of his ministry. The message should be very clear, based on what the parliamentary assistant just said: This government does not consider retroactivity appropriate.

Ms. Lawrence, any other number of people out there who are existing victims of registered documents that predate October 19, 2006, take heed of the clear articulation by the parliamentary assistant. He may have done this out of an act of generosity, so as to suppress any inappropriate high expectation by anybody. He may have been bucking his minister’s directions, because the ministry has wanted to maintain the charade that somehow victims who predate October 19, 2006, will be dealt with in the 4.1 compensatory assurance scheme. I thank you, Parliamentary Assistant, for the clear message to victims out there that they’re being exploited by the government for the purpose of this exercise but will be dropped like hot potatoes once this bill is passed and can knock on doors until Hades freezes over.

I don’t want to prolong the debate on this. The government caucus members have their marching orders.

Recorded vote, please.

Ayes

Kormos, O’Toole, Tascona.

Nays

Dhillon, Fonseca, Kular, Leal, Ramal.

The Chair: The motion is lost.

Now we are back to debating the amendment. Is there any additional debate?

Mr. Kormos: On behalf of New Democrats, I’m not going to buy into the commencement date of October 19, 2006. It’s unfair. It should predate that.

Mr. Tascona: I think this is the critical part of what makes this not retroactive, and it’s unfortunate. We’re going to be dealing with this. I can’t support it.

Mr. O’Toole: The mere fact that it’s in there will cause a challenge of some sort. We’d be better to have had “as determined by” this hearing officer, whoever. Do you know what I’m saying? It’s a fixed date and that’s what the problem is. It seems to be that there are two different classes of persons with applications. We’re just trying to make sure that no one is excluded because they

haven't followed the court process to be clear who has committed the fraud by the hard date.

The Chair: Any additional debate? I'll call the question. Those in favour of the motion? Those opposed? Carried.

That brings us to government motion number 14.

Mr. Tascona: Can we go back to 10?

The Chair: Do you want to do 10 now?

Mr. Tascona: I want to go back to 10 because it was stood down. I've got the new amendment.

The Chair: Sure. Government motion 10 was stood down. Mr. Dhillon, do you wish to withdraw the original government motion 10?

Mr. Dhillon: Yes.

The Chair: You will now move this amended—

Mr. Dhillon: Yes.

I move that clause (c) of the definition of "fraudulent person" in section 1 of the Land Titles Act, as set out in subsection 15(1) of the bill, be amended by adding "knows that the person" after "but".

The Chair: Debate?

Mr. Kormos: I appreciate the intent, as I thought I did earlier, and I'm grateful to legislative counsel, Mr. Wood, for his assistance in, not correcting, but refining perhaps, the language in the original amendment. I appreciate his contribution.

The Chair: Any other debate? I'll call the vote. Those in favour of the motion? Opposed? Carried.

Now we go to government motion 14.

Mr. Dhillon: I move that section 57 of the Land Titles Act, as amended by subsection 15(2) of the bill, be amended by adding the following subsection:

"Notice to director of titles

"(13.1) A court shall not direct the rectification of the register under clause (13)(b) unless the applicant in the proceeding before the court has given notice of the proceeding to the director of titles and the director of titles is a party to the proceeding."

1850

Mr. Kormos: This amendment makes sense.

Mr. Tascona: I didn't think so. The problem I've got here is that it says "has given notice to the director of titles"—I understand that—"and the director of titles is a party to the proceeding," but what happens if the director of titles doesn't want to be a party to the proceeding?

Ms. Carter: If someone is made a party to the proceeding—in this case, for example, if the director of titles didn't want to be a party, then the director of titles would just indicate to the court that they had no interest in the proceeding and it would continue in the absence of the director of titles.

Mr. Tascona: I know, but how does the director of titles become a party to the proceeding? They have to be a party to it; they have no choice.

Ms. Carter: I don't understand the question.

Mr. Tascona: If you're a party to the proceeding, you can say, "Oh, I'm not going to participate." Are you saying to me that the director of titles is automatically a

party to the proceeding? Is that what you're saying to me?

Ms. Carter: If the person doesn't seek to rectify the title through the director of titles and instead chooses to go to court, the provision provides that the director of titles be made a party and be given notice.

Mr. Tascona: Well, if that's the way it is—

Ms. Carter: Or the court shall not order rectification without—

Mr. Wood: Yes, I support that interpretation. Perhaps it's clearer just to say that being a party to a proceeding is the right to attend the proceeding. You can choose not to exercise that right. That doesn't invalidate the proceeding.

Mr. O'Toole: But it disqualifies them by saying that the court shall not direct rectification unless the director is a party to the hearing.

Ms. Carter: Unless the director is made a party in the proceeding. After the director is made a party in the proceeding, the director of titles can decide not to participate.

Mr. O'Toole: But if he doesn't participate, the court can't order rectification. The consumer could still be left out in the cold if the director of titles didn't participate in the court proceeding.

Ms. Carter: I don't think that's correct. If the director of titles didn't participate in the proceeding, the director of titles would still receive an order from the court directing that the title be rectified, and the Land Titles Act requires that the director of titles implement any orders of the court.

Mr. O'Toole: But it says, "A court shall not direct the rectification of the register under clause (13)(b) unless the applicant..." That's not what it says to me. I'm saying if the director chooses not to participate, and the court, through some civil action, has made a determination that there is cause, then I've got another quarrel with the—

Ms. Carter: No. If the director of titles has been made a party but doesn't participate, they've still been made a party. The requirements of the provision have been fulfilled.

Mr. Kormos: I hope you don't mind, but I'm going to come to the defence of the motion. As Mr. Wood has already indicated, you've got all sorts of actions going on in any number of forums where parties are named, two or three pages long, and only a handful are active in the litigation. It's important, obviously, that the director be a party. As I understand it, parties are named by the plaintiff, if you will, by the applicant, subject to a person arguing that he or she should not be a party. Is that accurate in terms of how this sort of stuff works, Mr. Wood?

Mr. Wood: Well, in this case, we have the statute, the Land Titles Act, which confers the right to be a party on the director of titles.

Mr. Kormos: So it flows from the statute, but as I say, it's not a matter of a court ordering that somebody be a party. The applicant knows that the court can't give

him or her relief unless and until the director is a party to the proceedings.

Mr. Wood: That's right

Mr. Kormos: I appreciate your comments, Mr. O'Toole, but I don't see it as problematic.

The Chair: We're going to call the question. I think we've defined the stance. Those in favour of the motion? Those opposed? The motion is carried.

Government motion number 15.

Mr. Dhillon: I move that subsection 57(16) of the Land Titles Act, as set out in subsection 15(2) of the bill, be struck out and the following substituted:

"Power to summon witnesses

"(16) For the purposes of the hearing, the director of titles may exercise the powers described in subsections 20(1), (2) and (3) with necessary modifications and the reference in subsection 20(1) to an applicant is deemed to be a reference to any party to the hearing.

"Same

"(17) Subsections 20(4) to (7) apply to the hearing with necessary modifications.

"Assistance

"(18) The director of titles may, in the course of the hearing, require a party to the hearing to produce a document or record and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce information in any form, and the person shall produce the document or record or provide the assistance."

The Chair: Debate?

Mr. Tascona: Call the question.

The Chair: Those in favour of the motion? Those opposed? It is carried.

Government motion number 16.

Mr. Dhillon: I move that section 15 of the bill be amended by adding the following subsection:

"(2.1) The French version of the following provisions of the act is amended by striking out 'réclamation' wherever that expression appears and substituting in each case 'demande':

"1. Subsection 58(2).

"2. Clause 59(1)(a).

"3. Subsection 59(2)."

Mr. Tascona: Call the question.

The Chair: Those in favour of the motion? Opposed? Carried.

Government motion number 17.

Mr. Dhillon: I move that subsection 15(3) of the bill be struck out and the following substituted:

"(3) Subsection 59(1) of the act is amended by striking out 'or' at the end of clause (b) and by adding the following clauses:

"'fraud

"(d) if the person knowingly participates or colludes in a fraud with respect to the interest or right on which the claim is founded;

"'subrogated claim

"(e) if the interest or right on which the claim is founded is derived on or after October 19, 2006 from a subrogated claim; or

"'claim of insurer

"(f) if the person makes the claim, on or after October 19, 2006, on behalf of an insurer of the person."

The Chair: Debate?

Mr. Tascona: I have a question on the fraud. Reading (d), it says, "if the person ... participates or colludes in a fraud." Why do you need to have "knowingly?" What are you trying to accomplish? I'll put it to ministry staff: Why do you need to impart knowledge to a person who participates or colludes in a fraud?

Ms. Carter: I would defer to legislative counsel, but I think the word "knowingly" just modifies the word "fraud" and makes it clear.

Mr. Wood: Well, it qualifies "participates or colludes in a fraud." You'd have to think of certain situations where you might, in an innocent way, contribute to a fraud, since you're perhaps a bone fide purchaser registered on title.

Mr. Tascona: The way I look at it is, if the person says, "I didn't know that was fraudulent. I didn't have the mens rea to do this"—you're just raising the standard for someone to participate in fraud. You could say if the person "willingly participates or colludes in a fraud," but you wouldn't want to even use that language because you'd be raising the standard. I don't agree with "knowingly," because I think you're just watering it down.

Mr. O'Toole: It's in the original version. It's "If a person knowingly participates" right in the—

Mr. Tascona: But they haven't done anything.

Ms. Carter: What's being added is clause (f).

Mr. Tascona: I know. I don't agree with that, and Mr. Kormos may comment on it, but I think it's raising the standard with respect to—we're trying to get at people who participate or collude in a fraud. You're just making it more difficult to prosecute somebody.

Ms. Carter: Section 59 deals with eligibility for compensation. That's it.

1900

Mr. Tascona: I hear you.

The Chair: Mr. Kormos.

Mr. Kormos: Once again—this is twice now, friends—I come to the aid of government.

The Chair: That's twice in 16 years, though.

Mr. Kormos: Whether it's useful or not remains to be seen.

I think legislative counsel has hit it on the head. Look at a scenario—for instance, one of the notorious cases is an absent spouse with a power of attorney. You could have an absent spouse affix his or her signature to something, not believing or not wishing or not intending it to be used in a fraudulent way. Once you have colluding, that implies fraud and that implies in and of itself knowledge, but mere participation—what about unwitting participation?

Mr. Tascona: I don't think it makes it any different. I just think it raises the standard. It's a matter of evidence,

proving that they participated. Now you've got a mens rea element, so you have to knowingly—

Mr. Kormos: What about the person who says, "Yes, that's my signature, and yes, that's what I signed, but it wasn't designed to be used for that purpose"?

Mr. Tascona: I'm not going to win this.

Mr. Kormos: Maybe you will, you think? Do you buy lottery tickets, Joe?

The Chair: Now he's marked his territory, perhaps I could call the vote. I'm going to call the vote. Those in favour of the motion? Those opposed? The motion is carried.

Government motion number 18.

Mr. Dhillon: I move that section 15 of the bill be amended by adding the following subsections:

"(3.1) The act is amended by adding the following sections:

"Inspection

"59.1(1) In this section,

"'inspector' means the director of titles or a person designated in writing by that director when exercising any of the powers set out in this section.

"Powers

"(2) Upon having a reasonable belief that a person described in subsection (3) is likely to have information relevant to determining whether a payment of compensation out of the land titles assurance fund is authorized under subsection 57(4.1), an inspector may,

"(a) require that the person produce for inspection and examination, in a readable form, any documents and records that may contain the information;

"(b) require that the person provide whatever assistance is reasonably necessary to produce documents and records in a readable form when required to do so under clause (a), including using any data storage, processing or retrieval device or system for that purpose;

"(c) upon giving a receipt for them, copy any of the things that the person is required to produce under clause (a) if the inspector returns the things promptly to the person who produced them; and

"(d) require that the person answer all inquiries relevant to the information.

"Persons being inspected

"(3) The persons who are subject to an inspection under subsection (2) are every person who is registered as the owner of land or some estate or interest in land with respect to which an application for compensation from the land titles assurance fund is made under subsection 57(4.1) or who was registered as such at the time the claim for compensation arose.

"Identification

"(4) An inspector shall produce, on request, evidence of the authority to carry out an inspection.

"No obstruction

"(5) No person shall,

"(a) obstruct an inspector conducting an inspection;

"(b) withhold from the inspector or conceal information that is relevant to the inspection; or

"(c) withhold from the inspector or conceal, alter or destroy any documents or records that are relevant to the inspection.

"Admissibility of copies

"(6) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

"Offence

"59.2 A person who contravenes subsection 59.1(5) is guilty of an offence and, on conviction, is liable to,

"(a) a fine of not more than \$50,000 or imprisonment for a term of not more than two years less a day, or both, if the person is an individual; and

"(b) a fine of not more than \$250,000, if the person is a corporation."

The Chair: Debate? I will call the question. Those in favour of the motion? Opposed? It is carried.

This brings us to PC motion number 18.1.

Mr. Tascona: This is a very important amendment. I have the minister in Hansard and also in a letter he wrote earlier to the committee that he was looking at making changes to powers of attorney. I didn't see anything in here about that. That's one of the problems we've had.

The Chair: Could you read it into the record before you speak to it? It's petty on my part, I know, but—

Mr. Tascona: I don't know if it's in order.

The Chair: Well, we'll wait till the end, won't we?

Mr. Tascona: I move that section 15 of the bill be amended by adding the following subsection:

"(3.1) Subsection 70(2) of the act is repealed and the following substituted:

"Registration

"(2) An original power of attorney may be registered in the prescribed manner if,

"(a) it is filed personally by the donor of the power of attorney who provides proof satisfactory to the land registrar of his or her identity;

"(b) it is filed by a person other than the donor and is accompanied by other evidence satisfactory to the land registrar that it is authentic, such as an affidavit from a witness to the power of attorney.

"No copies

"(2.1) For greater certainty, a copy of a power of attorney, whether notarized, certified or otherwise guaranteed to be authentic, may not be registered on and after the day this subsection comes into force."

The Chair: It grieves me, but section 70 is not open in the original bill, so this amendment cannot—

Mr. Tascona: I'd like unanimous consent to make it in order, since the minister said he was going to deal with this in the bill.

The Chair: Is there unanimous consent? I heard a no. *Interjections.*

The Chair: I'm not a lawyer, so I'm going to follow the law.

Mr. Tascona: I've got another one.

The Chair: PC motion 18.2.

Mr. Tascona: I move that subsection 15(4) of the bill be struck out and the following substituted:

“(4) Section 78 of the act is amended by adding the following subsections:

“Exception, fraud

“(4.1) Subsection (4) does not operate to validate an instrument that, if unregistered, would be fraudulent and void.

“Same

“(4.2) No interest of any kind whatsoever in real property is created or given by the registration of a fraudulent instrument or an instrument that is registered subsequent to a fraudulent instrument and that depends for its validity on the fraudulent instrument.

“Same

“(4.3) For greater certainty, nothing in subsections (4.1) or (4.2) invalidates the effect of a registered instrument that is not a fraudulent instrument or not an instrument that is registered subsequent to a fraudulent instrument and that depends for its validity on the fraudulent instrument.”

The Chair: This motion is in order. Any debate?

Mr. Tascona: I think it's a pretty good motion. I'd like to see consent from the government in terms of looking at this.

The Chair: Any additional debate? I will call the motion.

Mr. Tascona: Recorded vote.

Ayes

Kormos, O'Toole, Tascona.

Nays

Dhillon, Kular, Leal, Ramal.

The Chair: The motion is lost.

Mr. Tascona: Your minister is going to be mad. You voted down every one of our amendments—every one—with respect to the power of attorney.

The Chair: PC motion 18.3.

Mr. Tascona: I move that subsection 15(5) of the bill be struck out and the following substituted:

“(5) Section 156 of the act is amended by adding the following subsections:

“Same, false information

“(2) Every person is guilty of an offence if the person,

“(a) falsifies, assists in falsifying or induces or counsels another person to falsify or assist in falsifying any information or document relating to the registration of an instrument or a document; or

“(b) knowingly applies for, assists in applying for or induces or counsels another person to apply for the registration of an instrument or a document based on false information or a fraudulent document.

“Penalties

“(3) An individual who is convicted of an offence under subsection (2) is liable to,

“(a) a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both; and

“(b) a fine of not more than \$50,000, in addition to the penalty imposed under clause (a), if,

“(i) the individual is described in one of clauses 2.1(1)(a) to (f), or

“(ii) the individual deals with real estate or mortgages in his or her professional capacity.

“Same, corporation

“(4) A corporation that is convicted of an offence under subsection (2) is liable to a fine of not more than \$250,000.”

Is that in order?

1910

The Chair: Thank you. That is in order.

Mr. Tascona: Do you know why it's a good motion, to the members opposite? You're just dealing with persons or corporations. This is broadening the net to deal with the individuals who would register documents, people who deal regularly with mortgages. It's a broader net.

The Chair: Any additional debate? I call the vote.

Mr. Tascona: Recorded vote.

Ayes

Kormos, Tascona.

Nays

Dhillon, Kular, Leal, Ramal.

The Chair: The motion is lost.

PC motion number 18.4.

Mr. Tascona: I move that section 15 of the bill be amended by adding the following subsection:

“(5.1) The act is amended by adding the following section:

“Rectification of register

“157.1(1) This section applies if a person has fraudulently procured an entry on the register and establishes rules that apply to protect the interests of an innocent person,

“(a) who has lost status as the registered owner of land as a result of the fraud;

“(b) who has lost status as a registered mortgagee of land as a result of the fraud; or

“(c) whose land was charged or encumbered pursuant to or subsequent to the fraud.

“No conviction necessary

“(2) This section applies whether or not a person has been convicted for an offence under this act or the criminal law of Canada with respect to the fraud.

“Time of fraud

“(3) This section applies to acts of fraud whether they occurred before, on or after the day this section comes into force.

“Reinstatement of registered owner

“(4) If the land registrar is satisfied that a person has lost status as the registered owner of land as a result of fraud and that the person, absent the fraud and any subsequent transactions that relied on the fraud, would be the registered owner of the land, the land registrar may,

“(a) cancel any registrations on the register that relate to the fraud;

“(b) cancel any entries on the register that were registered subsequent to the fraud; and

“(c) reinstate the person who lost status as the registered owner of the land.

“Reinstatement of mortgagee

“(5) If the land registrar is satisfied that a person lost status as a registered mortgagee of land as a result of fraud and that the person, absent the fraud and any subsequent transactions that relied on the fraud, would be a registered mortgagee of the land, the land registrar may,

“(a) cancel any registrations on the register that relate to the fraud;

“(b) cancel any entries on the register that were registered subsequent to the fraud; and

“(c) reinstate the person who lost status as a registered mortgagee of the land.

“Cancellation of encumbrance

“(6) If the land registrar is satisfied that land has become charged or encumbered as a result of fraud and that, absent the fraud and any subsequent transactions that relied on the fraud, the land would not be so charged or encumbered, the land registrar may,

“(a) cancel any registrations on the register that relate to the charge or encumbrance; and

“(b) cancel any entries on the register that were registered subsequent to the fraud.

“Innocent third parties

“(7) If, in reliance on a fraudulent entry on the register, an innocent person became registered as the owner of land or of a charge upon land and that person’s interest is adversely affected by a change in the register made by the land registrar under this section,

“(a) the innocent person shall have no claim against the land;

“(b) the innocent person shall have no claim against a person who was reinstated as the registered owner; and

“(c) the innocent person is entitled to a remedy in accordance with section 57, including compensation from the Land titles assurance fund.”

The Chair: Debate?

Mr. Tascona: This is much superior to the government’s situation. What this means is that a person who has the title gets the title, keeps their land and doesn’t have to go to the fund to get compensated. They keep their title. For the mortgagee, they get the mortgage struck from the mortgage on their property. The innocent party, whether they purchased the land or whether they’ve become a mortgagee on the land, can go to the fund as the fund of first resort. This is a good motion and I heartily endorse it.

The Chair: Additional debate? I’ll call the question.

Mr. Tascona: Recorded vote.

Ayes

Kormos, Tascona.

Nays

Dhillon, Fonseca, Kular, Ramal.

The Chair: The motion is lost.

That moves us to government motion number 19.

Mr. Dhillon: I move that subsection 163(0.2) of the Land Titles Act, as set out in subsection 15(6) of the bill, be amended by striking out “subsection (1)” and substituting “subsection (0.1).”

The Chair: All those in favour of the motion? Opposed? It is carried.

Government motion number 20.

Mr. Dhillon: I move that subsection 163.1(1.1) of the Land Titles Act, as set out in subsection 15(7) of the bill, be struck out and the following substituted:

“Director’s orders

“(1.1) The director of titles may take orders,

“(a) specifying evidence for the purposes of clause 57(13)(b); or

“(b) specifying what constitutes the requisite due diligence for the purposes of clause 57(4)(b) or 4.1(b).”

The Chair: Any discussion? I’ll call the motion. In favour? Opposed? Carried.

Mr. Dhillon: Chair, I made an error. In motion 20, after “Director’s orders,” I should have stated:

“(1.1) The director of titles may make orders.”

The Chair: Thank you for the clarification. That’s what I thought I heard.

We are now finished section 15. I am going to call the question. Shall section 15, as amended, carry?

Mr. Tascona: Recorded vote.

Ayes

Dhillon, Fonseca, Kular, Ramal.

Nays

Kormos, Tascona.

The Chair: Carried.

Moving to section 16, there were two additional amendments handed out. PC motion number 20.1.

Mr. Tascona: This one is a motion that deals with the date rape situation that the minister indicated he was going to put into the bill—but he never did, from what I understand—to make sure that it wasn’t voluntary for someone to apply for it. This will deal with a bar owner—making it mandatory for them to set up their premises to protect women from date rape drugs.

I move that section 16 of the bill be amended by adding the following subsection:

“(4.1) Section 6 of the act is amended by adding the following subsection:

“Requirement to apply for an expanded licence

“(1.1) A person who holds a licence to sell liquor for premises that constitute a bar or other prescribed premises shall promptly apply for a change to the licence holder’s licence to cover the hallways and washrooms to which patrons of the bar or other prescribed premises have access.”

The Chair: Any debate?

Mr. Tascona: Well, Peter—

Mr. Kormos: “Well, Peter”?

The Chair: Actually, I’ll call on him, if you don’t. I don’t get to do much. Let me call on Mr. Kormos.

Mr. Kormos: Okay, Joe. Come on, Mr. Tascona, please. This is a red herring, the drinks in the washroom—

Mr. Tascona: It’s not.

Mr. Kormos: Not your amendment. Your amendment gives effect to what the government says it purports to do, but what we’ve learned in short order is that the date rape drug problem doesn’t occur primarily when women, who are the victims, go to the washroom and leave their drink behind with a friend sitting at the table. It occurs, we’re told, when young people who go to bars—and young people dance; some of you may remember that—when the whole group gets up from the table and goes out on the dance floor and a whole table full of drinks is left unattended.

When the government made this announcement, the prospect of taking your drink into most washrooms of most bars and taverns and saloons—I used to go to the Brunswick House up on Bloor Street. You wouldn’t want to drink out of any container that had been brought into the restroom facilities there, at least not back in 1971.

The Chair: Thank you for sharing that with us during mealtime.

1920

Mr. Kormos: Well, think about it, Chair. It’s a silly—again, not the amendment, but the proposition that somehow this is going to prevent date rape drugs from being introduced into young women’s drinks in drinking places is naive.

Mr. Tascona is right. If you’re going to do it, do it universally. That’s why we need more liquor inspectors to make some of these places clean up those restroom facilities so that people are comfortable taking their drinks with them.

The real solution, in my view, to the date rape issue is more active supervision in these places, and that means more onus on the operators of the establishments to ensure that their patrons, drinking as they are, are kept safe while they’re in those premises.

I’ll support the amendment because I understand the spirit in which it’s moved.

Mr. Tascona: The reason I moved this amendment is that I asked the minister a question in the House and he said, “We wouldn’t want to apply this to Swiss Chalets

and things like that,” Swiss Chalet being a popular place. We weren’t talking about that.

Ted McMeekin went out on full government hearings with respect to the Liquor Licence Act, and the Attorney General is on record in Hansard talking about, “We’ve got to deal with date rape drugs, and this is the area that we would be dealing with by extending it to hallways and washroom facilities.” Here we come back, and they don’t do anything about it. Yet we heard—and I may disagree with my friend Mr. Kormos on this in terms of what kind of activity can happen—what we’re talking about here is in terms of people being able to take their drinks with them throughout the facility as opposed to being strictly limited to having them at their table. That’s what we’re talking about here. We’re talking about bars or other prescribed premises where you can ensure that your drink is with you, with the person, and that’s what the Attorney General was talking about. That’s what this government, when it went out on full public hearings, was talking about, and yet they make it voluntary.

This is the issue: We’re making it mandatory for those bar owners who are in this type of business—and quite frankly, we’re not talking about Swiss Chalet, though we’d like to be eating it. We’re talking here about making it mandatory. We’re talking about making the bar open in terms of its entire access, to make sure that this type of activity doesn’t happen, and dealing with the hypocrisy of the government in terms of saying they’re going to do something about it which they never did. So this is the motion that’s on the table, and I think it’s legitimate.

The Chair: No additional discussion? I will call the vote.

Mr. Tascona: Recorded.

Ayes

Kormos, O’Toole, Tascona.

Nays

Dhillon, Fonseca, Kular, Leal, Ramal.

The Chair: The motion is lost. That moves us to 20.2.

Mr. Tascona: I move that the bill be amended by adding the following subsection:

“(14.1) Section 8 of the Liquor Licence Act is amended by adding the following subsection:

“Mandatory condition: liability insurance

“(3.1) It is a condition of a licence that the applicant or licence holder obtain and maintain liability insurance in the prescribed amount with respect to the premises for which the licence is sought or the licensed premises, as the case may be.”

The Chair: Discussion?

Mr. Tascona: Yes. We heard at length from different stakeholders in terms of the problems that are created when a bar doesn’t have proper liability insurance. The presumption that they would be carrying it is a wrong

presumption. What they were looking for was mandatory liability insurance, and I think it's something that should be done, especially when the licence holder is in a position where they're putting a person at risk. They should at least have that insurance in place so that people are protected. It's a pure consumer issue, and I think it should be supported.

Mr. Kormos: This motion by Mr. Tascona is, in and of itself, a significant and very valuable contribution to this process. I believe that all of us on this committee were shocked and disturbed by learning that there are not mandatory minimum liability insurance requirements for licensed premises. We all know that there is increasing responsibility on the part of a licensed premise, its owner and its staff, designed to assist in safeguarding the well-being of patrons who are inherently in a dangerous position because you're in a place where people are drinking and inevitably getting drunk.

It was down in Niagara region, as a matter of fact, the Jordan Station area, where the seminal Ontario Court decision developed around the liability of a tavern owner and the consequences of a drunk driver who leaves that tavern, gets into a car and causes injury to a third party. But that sort of liability, while socially positive—it's important that that liability be there—is irrelevant if there isn't the insurance coverage to give effect to payment for the damages that may arise from a tavern owner's negligence.

This is an automatic one for me. Mr. Tascona has given the government a whole lot of wiggle room by not indicating the amount that the minimum coverage should be. He leaves it to the government, by regulation, to determine that amount.

You, my colleagues, government members, should be outraged that this requirement doesn't already exist. If you go to a drinking place, as you do—with your spouse, with your family, with your friends—after a sports game, whenever you might, you expect that if that tavern owner, that saloon keeper isn't fulfilling their responsibilities and, as a result of that, puts you in danger as a patron—be you in the premises or be you leaving the premises—you expect that tavern owner/saloon keeper to, at some point, pay up for damages that you might incur. The damages can range from modest to, in the case of, let's say, a pedestrian who isn't a motor vehicle owner or operator and therefore has no motor vehicle personal injury coverage that they can access on a first-party basis—let's say that any one of you or, more dramatically, your kids, leave a licensed establishment as a pedestrian with no auto insurance coverage of your own to access on a first-party basis, and are mowed down by a drunk driver who was served after he or she became drunk by that tavern owner who didn't cut him or her off and then didn't take appropriate steps, perhaps knowing that they had a car that they intended to drive. When your kid is left paralyzed from the neck down—I'm not a doctor, but I think that qualifies you for quadriplegia. That's what victims of drunk drivers end up being. You're going to be expecting that tavern owner to either

be totally or at least in part responsible for the economic well-being of your kid for the rest of his or her life. And they should be.

The courts will rule on that. There has been an interesting evolution of the case law. We just saw some recent case law where there are some twists and turns around, for instance, the proverbial office party where drinks are being served. Do you remember that, Mr. Tascona? I think it was a real estate firm and an office party.

It is just unconscionable that we can have, that we accept and that we approve of these various levels of liability that have been created by the courts, by the common law, yet we don't, at the same time, ensure that people who are entitled to compensation as a result of those liabilities are going to access that compensation because we don't require tavern owners to carry liability insurance.

The other very important thing is that the insurer, then, will play an active role in policing that establishment. Do you want to talk about date rape and curtailing it? I don't know what the law is around a tavern owner's liability around a woman whose drink is contaminated with a date rape drug. But if you want to get compliance with tavern owners who ensure that their staff are told that you have to monitor unattended drinks, that's the solution—isn't it?—for there to be sufficient numbers of staff in a tavern and for them to be told, "Part of your job is monitoring unattended drinks." It's as simple as that. Let them take their drinks to the toilet, for Pete's sake.

Interjection.

Mr. Kormos: Wait a minute. If you have an insurance company involved mandatorily, because there has to be coverage, that insurance company is going to start to take an interest in supervising that licensed establishment, its insurance client, to ensure that that client maintains some minimum level of responsibility in terms of not only compliance with the Liquor Licence Act but a minimum level of supervision.

This amendment will save lives—I believe that—because it will make tavern owners incredibly conscious of premium costs or the prospect of being denied insurance coverage. Of course, if you're denied insurance coverage because you've got a track record that's just too deplorable, that means you don't have a licence. That's the way it should be, isn't it?

Mr. Tascona has done this committee a true favour with this amendment. The government has a great deal of wiggle room because he indicates that the amount is to be prescribed. If the government wants to test the waters a little bit before this section becomes effective, it simply has to decline to prescribe the minimum rate. Right, Mr. Tascona?

Mr. Tascona: Correct.

Mr. Kormos: There will be pressure on it, but what it says and what it means is that the requirement doesn't have to come into effect tomorrow—I wish it did—but the government has wiggle room. I'm looking forward to the vote on this one, sir.

The Chair: Are we ready for the vote?

Mr. Tascona: I've been putting forth these amendments. We don't hear one word out of the government members; not one word on any of these amendments. We're talking about mandatory liability insurance to be prescribed in situations—and we know what the situations are. We don't get one word out of the government; not one. If that's why you're going to be here, just to vote everything down and you don't even say a word, it's a joke.

A recorded vote.

Ayes

Kormos, O'Toole, Tascona.

Nays

Dhillon, Fonseca, Kular, Leal, Ramal.

The Chair: The motion is lost.

We have finished amendments for section 16, so I will call the question. Shall section 16 carry? Those in favour?

Mr. Tascona: Recorded vote, eh?

The Chair: You didn't ask.

Mr. Tascona: Come on. I was out there doing your food.

The Chair: I appreciate that. As a personal favour for you, I will break every rule in the book and have a recorded vote.

Ayes

Dhillon, Fonseca, Kular, Leal, Ramal.

Nays

Kormos, O'Toole, Tascona.

The Chair: Section 16 is carried.

We will continue on with—

Mr. Kormos: Chair, do you want to entertain some blocks of sections?

The Chair: Yes, I do.

We're having a pause.

The committee paused from 1933 to 1940.

The Chair: The pause is over.

Sections 17 to 43, inclusive, contain no proposed amendments. Shall sections 17 to 43 carry? Carried.

That moves us—

Mr. Kormos: If I may suggest, Chair, that schedule A—

The Chair: Okay. Shall schedule A, sections 1 to 32 carry? Carried.

Shall schedule A carry? Carried.

Schedule B, sections 1 to 31: There are no amendments. Shall schedule B, sections 1 to 31, carry? Carried.

New section, government motion 21, moved by—

Mr. Dhillon: I move that schedule B to the bill be amended by adding the following section:

“31.1 Section 160 of the act is repealed and the following substituted:

““Interim financial statement

““160(1) Within 60 days after the date that an interim financial statement required to be filed under the Securities Act and the regulations made under that act is prepared, an offering corporation shall send a copy of the interim financial statement to all shareholders who have informed the corporation that they wish to receive a copy.

““Address

“(2) The interim financial statement referred to in subsection (1) shall be sent to a shareholder's latest address as shown on the records of the corporation.””

Mr. Tascona: Who can prepare that interim financial statement? Is that a CGA or a CA or a CMA? Is there an answer to that?

Mr. Dhillon: Can we get someone to answer that, please?

Mr. John Mitsopulos: I'm John Mitsopulos, from the Ministry of Government Services. It's typically the corporation's auditors.

Mr. Tascona: So who oversees that? Oh, the auditors. Okay.

Mr. Mitsopulos: There's usually an audit committee that oversees the work of the auditors.

Mr. Tascona: Okay. That's fine.

The Chair: Any other debate? I will call the vote. Those in favour of the motion? Opposed? It is carried.

Shall schedule B, sections 32 to 41, carry? Carried.

Shall schedule B, as amended, carry? Carried.

Mr. Kormos: You've got to carry the bill, guys. It's your bill. I'm not going to carry it.

Mr. Ramal: No, we don't expect that. We never expect it.

The Chair: Shall schedule C, sections 1 to 29, carry? Carried.

Shall schedule C carry? Carried.

Shall schedule D, sections 1 to 93, carry? Carried.

Mr. Kormos: Chair, if I may, we're at the point now where there has been some contention around schedule D, and that of course relates to the taxation, non-taxation, payment in lieu of taxation of profits, non-profits. In an effort to move this along more effectively, if you'll indulge me for a minute—

The Chair: Certainly.

Mr. Kormos: —the NDP, as have, I'm sure, the Conservatives, have been eager to speak for the small what I call mom-and-pop funeral homes, places like Pattersons Funeral Home in Welland or Hammond funeral home in Thorold. You've all got them in your communities. They have felt besieged over the course of the last several years by the larger corporate funeral home-cemetery-crematorium operators. We presented amendments. I want to make sure that if the government amendment in effect does what the government has been called upon to do in an effort to address the concerns, then I'm more

than pleased not to move my amendments and just move ahead.

But I want to explain our position. A letter was sent—and I've given a copy to the clerk, so it will form part of the record—to the minister, Gerry Phillips, dated December 4, from the Ontario Funeral Service Association, signed by Phil Screen and Doug Kennedy. It thanks him for his letter of December 4. It goes on to talk about the proposals that were made in Minister Phillips's letter of December 4. Then the authors of the Ontario Funeral Service Association wrote, "We appreciate the recent efforts that you have made to level the playing field in the bereavement sector. We share a commitment to high standards of education for all funeral professionals ... something that will serve all Ontarians quite well."

"Including the proposals from your most recent correspondence, the Ontario Funeral Service Association and funeral directors for Open Dialogue are pleased to unequivocally support passage of the bereavement-related portion of Bill 152."

I take as that an endorsement by the Ontario Funeral Service Association of the response by the government to the concerns that were expressed. I also want to make it clear that in the case of the New Democrats, our researcher Elliott Anderson had been working with Declan Doyle. It was with Mr. Doyle that Mr. Anderson had been working, and, with the assistance of legislative counsel, Mr. Wood, there had been the preparation of some amendments at the request of Mr. Doyle, who was a spokesperson for the OFSA.

Mr. Doyle e-mailed us, the NDP, through Mr. Anderson today, saying, "Hey Elliott"—not "Dear Elliott"—"Thanks again for your work on this for us."

"I have been informed that the OFSA have worked on another proposal for amending the legislation, so we no longer need these amendments to pass in committee this afternoon."

I'm not complaining about anything. This is good. I just want to make it very clear that the New Democrats are relying upon the submission made to Mr. Phillips by the OFSA and by the communication by Mr. Doyle to us that they are indeed pleased, or at least satisfied, with the government amendments. That's fine by me. I don't want to belabour the point, no need to, but I want to make it clear, and I'll simply be asking staff here, who have copies of the NDP amendments and the Conservative amendments, because I tried to compare the two, side by side, while I'm sitting here and they look like it's on point. If staff could assist us in ensuring that we've all been singing from the same page of the hymn book—Conservatives, New Democrats, government—when it comes to responding to the concerns of the smaller funeral home operators.

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The Chair: So you will not be tabling your motion, then.

Mr. Kormos: We've got them here. What I'm asking is for staff, when I asked them about the government motion, to assist us in putting the NDP motion, the Con-

servative motion, that appears to address the same issues and confirm what I believe to be the case, which is that they're basically consistent with each other.

Ms. Phyllis Miller: My name is Phyllis Miller, and I'm with the Ministry of Government Services. I take it, sir, that you're referring to motion 22.1?

Mr. Kormos: Yes, ma'am.

Ms. Miller: It is consistent with the motion which the government itself is proposing.

The Chair: One difficulty: Before speaking to a motion, I need it read.

Ms. Miller: Oh, sorry.

Mr. Kormos: Okay. Take us into schedule D, up to the sections that are being amended, if you want to.

Interjection.

The Chair: We're okay. It's 94 in general.

Mr. Kormos: Yes.

Ms. Miller: I was just about to explain that the directions set out in motion 22.1 are in fact consistent with the motion that the government itself proposes as number 22, with one small exception relating to the date of coming into force. The NDP motion would see it taking effect as of the day the legislation becomes effective, whereas the government motion relies upon the date of January 1, 2002, being the date for which crematoriums have been established. That is the date that's already established in the Funeral, Burial and Cremation Services Act.

Mr. Kormos: And what that does is effectively grandparent or capture—

Ms. Miller: That is correct.

Mr. Kormos:—these existing crematoriums.

Ms. Miller: Yes.

Mr. Kormos: For the purposes of—help us now. This is where you've got to help us so we understand exactly what we're voting for here.

Mr. Barry Goodwin: Perhaps in just plain English we can restate the policy intent, and that is that cemeteries are exempt from property tax by virtue of their use as a cemetery. The policy framework here allows for commercial activities to take place on cemeteries in the future, like the establishment of a funeral home on a cemetery property. As such, those commercial activities that are not the cemetery proper will be subject to property taxes if they are on a commercial or non-profit cemetery and exempt from property taxes if they're on a religious or municipal cemetery. If they're on a religious or municipal cemetery, they will be required to make a payment equivalent to property taxes into their own trust fund for the perpetual care of the cemetery.

Mr. Kormos: And the movement that's reflected in the government's amendment?

Mr. Goodwin: Prior to this, the policy position was that non-profits should also be exempt from the paying of property tax and would enjoy the payment-in-lieu option. The government's amendment makes property tax payable for non-profits.

Mr. Kormos: And the non-profits that happen to be religious?

Mr. Goodwin: They are distinct categories.

Mr. Kormos: Yes, because they have special taxation status in any event, separate and apart from any proposal here.

Mr. Goodwin: Yes, so that there's no overlap. You are religious, municipal or non-profit.

Mr. Kormos: And so the religious operators—it could be any number of denominations they're facing in Canada now—will be making payments in lieu of?

Mr. Goodwin: Yes. The equivalent amount of property tax they would be assessed if they were having a commercial activity on their cemetery would make it into the cemetery's care and maintenance fund, which is a trust fund that can only be spent on the maintenance and repair of the cemetery.

Mr. Kormos: I suppose the one concern the for-profit operators would still have is that they would say, "Well, we're paying taxes that go to the municipality, that are spread out all over the municipality, supporting all sorts of things. The religious operator is paying monies in lieu of taxes to their own perpetual care fund, which is in their self-interest, because that money would have to come from somewhere anyway." So you see, the non-profit cemetery still has to make investments into perpetual care. It still has to address itself or concern itself with the ongoing maintenance of that cemetery, and pay taxes to boot on the new installations. So you understand why that might still give rise to some sense of injustice. How do you speak to that?

Mr. Goodwin: Our perspective through the negotiations with stakeholders is that this is a much more level playing field. It's not perfectly level, but much more so than the status quo or the original proposals. There's a broad recognition that the perpetual care of cemeteries serves the public good, that the investment of those payments in lieu into the cemetery's care and maintenance fund for religious and municipal cemeteries may forestall their abandonment.

Mr. O'Toole: I don't want to go through the same litany of comments, but I also have some understanding of this sector because of legislation in our term of government and some reports that were done. Suffice it to say, I think it's better than the first draft letter we received from the minister, but I reiterate much of what Peter has said.

The funeral homes sector, what's been described as for-profit, mom-and-pop: I probably talked to 20 or 25 of them; I don't know how I became the contact point for our caucus, but indeed I did. What they wanted was a little bit more clarity. They understand the industry's changing. What's happening is that they're afraid and they want some response. I guess there's speculation in the section that the move towards visitation centres on cemeteries was the first in a number of steps that would eventually put them out of business. Those visitation centres will become funeral homes over time. They will just keep adding facilities—crematoriums and all the rest of it. They just wanted the ability to compete.

I guess the issue has been summarized as one of fair tax. The religious and municipal cemeteries are making payments in lieu, which would be the equivalent amount of tax, so it's been said. The difference there is that they're paying themselves in their perpetual care fund, which really doesn't affect the funeral home business directly unless they're in the cemetery business. If they're commercial and for-profit—SCI and Arbor and some of the larger ones, which I'm not particularly speaking for—they're the ones that have both funeral homes and cemeteries. They would be the only ones that would be disadvantaged, as I understand it. Is that right? Because the small mom-and-pops generally don't own cemeteries.

Mr. Goodwin: They would be more likely to have a stand-alone funeral home than other property.

Mr. O'Toole: There are very few that are corporately owned cemeteries.

Mr. Goodwin: I think you've cited most of them: Arbor—

Mr. O'Toole: Arbor and SCI, but I'm not sure. I'm not in the industry at all.

In that vein, I personally would forgo—if the government's amendments address that. I cite the same memo, dated December 5 and signed by the minister, and the section dealing specifically with these changes. If that is, in theory and in practice, what's going to happen in the bill, I'd be supportive of withdrawing our Conservative amendments.

The date I see here goes back to December 2. What would happen, in the grandfathering sense, to something—why would they go back that far?

Mr. Goodwin: With respect to crematoria, the date was established in the Funeral, Burial and Cremation Services Act when it was passed in 2002.

Mr. O'Toole: That's Bill 209, or whatever the bill was.

Mr. Goodwin: Yes. It was to not provide for any unfair advantage, so that people could go out and establish crematoria while the bill was before members or before it was proclaimed and take competitive advantage of that. So the date was set just prior to the introduction of the bill, January 2002. The grandfathering would be available to any crematorium that was in place prior to that date. Everyone has known the rules for four years in the sector since that time, so any newly established crematoria are subject to the new rules.

Mr. O'Toole: In the procedural sense here, Chair, what I'm suggesting is that we would be prepared to stand down our proposed amendments. Likewise, I guess you're thinking the same, and we would just move what the government's amendments—

The Chair: That's 21.1 and 21.2 that you will stand down?

Mr. O'Toole: Motions 21.1 and 21.2 are ours.

The Chair: Mr. Kormos.

Mr. Kormos: The NDP motion, 22.1, like yours, motion 22, deals with the Assessment Act.

Mr. O'Toole: That's the assessment portion.

Mr. Kormos: Yes. The NDP has a motion 24.1 that basically deals with parallel amendments to the Provincial Land Tax Act. Where's the government amendment to that effect?

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Mr. Goodwin: It is found in your package. Both statutes are amended—

Mr. Kormos: No, that's Conservative. Here we are, 24.

Ms. Miller: Yes, number 24 amends the Provincial Land Tax Act. It's exactly parallel.

Mr. Kormos: Thank you. In that case, I can indicate that we will decline to move NDP motions 22.1 and 24.1.

The Chair: Okay. The next motion we have to deal with is government motion number 22.

Mr. Dhillon: I move that paragraphs 2.1 and 2.2 of subsection 3(1) of the Assessment Act, as set out in subsection 94(2) of schedule D to the bill, be struck out and following substituted:

"Religious or municipal cemetery land

"2.1 Land that is used for bereavement-related activities as prescribed by the minister and that is part of a cemetery, if the cemetery is owned by a religious organization of a municipality.

"Crematoriums

"2.2 Land on which is located a crematorium and that is part of a cemetery, if,

"i. the registrar under the Cemeteries Act (Revised) or predecessor legislation to it consented to the establishment of the crematorium on or before January 1, 2002, or

"ii. the crematorium is owned by a religious organization or a municipality."

The Chair: Any debate?

Mr. O'Toole: It does tend to get a little technical. I'm not trying to be disruptive in any way. A couple of things they brought to my attention. For instance, if there was a funeral home in a cemetery and it's assessed—now, if you looked at the funeral home I'm speaking of, they would have a lot of parking and other things that come into the assessed value. For instance, I talked to Low funeral homes, a family; they have two, one in Uxbridge and one in Port Perry. I visited one of the sites. They pay over \$60,000 tax to those municipalities. A lot of it's the parking and other places to keep cars and things like that. And on the cemetery site, they're saying that they won't have all that. They'll just shave off an acre and say, "This is for the purpose of cremations," and visitation and services, whatever they do. But they won't be paying for all the parking, that will all be part of the cemetery. So they're still going to be at a disadvantage. Is that a false assumption on their part? Do you follow me? The assessment piece won't be fair. The other part of it is the not-for-profit. They get to build up these funds and in fact use them for perpetual care and the rest of it.

Mr. Goodwin: With respect to the assessment of roadways and parking, we are working with the Municipal Property Assessment Corp. and finance ministry to develop guidelines for the tax assessors to deal with those kinds of mixed uses. So if a parking lot, for example, was

specifically for a funeral establishment, it would be assessed as part of the funeral establishment.

Mr. O'Toole: But usually they use the roadways.

Mr. Goodwin: Shared roadways will be very hard to apportion use, so there's going to be a little bit of rough justice in terms of the assessment of the land to that.

To your second point, with respect to the not-for-profits, in the future, with this amendment, should it be accepted, they would make property tax payments, so they would not be investing those funds into their trust fund.

Mr. O'Toole: The not-for-profit would be paying taxes by—

Mr. Goodwin: That's correct, and they have an obligation to still maintain a trust fund.

Mr. O'Toole: That's fair.

Mr. Kormos: To be very clear, the rationale for the tax exemption of religious-owned cemeteries and accompanying services is?

Mr. Goodwin: Churches don't pay direct taxes on land used for services to their parishioners or to their church members. Generally speaking, it maintains the status quo. We're not aware that the religious organizations will enter into the commercial side of this business in a large way, so it's probably going to be a minimal risk.

Mr. Kormos: It's because of the broad historic tax exemption status—

Mr. Goodwin: Enjoyed by religious organizations.

Mr. Kormos: And we move, then, because—I'll leave it at that. I just want to make that very clear. But that is where you have, from time to time, the debate around whether some body constitutes a religion.

The Chair: Any further debate? Any further questions?

Government motion 22: Those in favour? Opposed? Carried.

That moves us to government motion 23.

Mr. Dhillon: I move that section 94 of the bill be amended by adding the following subsection:

"(4.1) Subsection 13(1) of the act is amended by adding 'or 16.2' after 'section 16.1'."

The Chair: Debate? I'll call the question. Those in favour? Opposed? Carried.

The next question is, shall schedule D, section 94, as amended, carry? Carried.

Shall schedule D, sections 95 and 96, carry?

Mr. Goodwin: Excuse me, Mr. Chair, government motion 24 relates to the same matters and should probably be considered. These are the parallel amendments that Mr. Kormos was referring to.

Mr. Kormos: That's section 97.

Mr. Goodwin: Oh, I'm sorry.

The Chair: Shall schedule D, sections 95 and 96, carry? Carried.

Moving us to section 97, government motion number 24.

Mr. Dhillon: I move that paragraphs 3.1 and 3.2 of subsection 3(1) of the Provincial Land Tax Act, as set out

in subsection 97(1) of schedule D to the bill, be struck out and the following substituted:

“Religious or municipal cemetery land

“3.1 Land that is used for bereavement-related activities as prescribed by the minister and that is part of a cemetery, if the cemetery is owned by a religious organization or a municipality.

“Crematoriums

“3.2 Land on which is located a crematorium, as defined in the Funeral, Burial and Cremation Services Act, 2002, and that is part of a cemetery, if,

“i. the registrar under the Cemeteries Act (Revised) or predecessor legislation to it consented to the establishment of the crematorium on or before January 1, 2002, or

“ii. the crematorium is owned by a religious organization or a municipality.”

The Chair: Debate? I will call the question. Those in favour? Opposed? Carried.

I will call the question: Shall schedule D, section 97, as amended, carry? Carried.

Next question: Shall schedule D, section 98, carry? Carried.

Shall schedule D, as amended, carry? Carried.

Shall schedule E, sections 1 to 5, carry? Carried.

That brings us to government motion number 25.

Mr. Dhillon: I move that the definition of “prior law” in subsection 7.3(1) of the Personal Property Security Act, as set out in section 6 of schedule E to the bill, be struck out and the following substituted:

“‘prior law’ means the Personal Property Security Act, as it reads immediately before the day subsection 3(2) of schedule E to the Ministry of Government Services Consumer Protection and Service Modernization Act, 2006 comes into force, including the applicable law as determined under that Personal Property Security Act; (‘loi antérieure’)”

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The Chair: Perfect. Any debate?

Mr. Kormos: Well, not quite perfect, but he tried. Best effort.

The Chair: Okay. Those in favour of the motion? Those opposed? It’s carried, somehow or other.

That brings us to government motion number 26.

Mr. Dhillon: I move that subsection 7.3(2) of the Personal Property Security Act, as set out in section 6 of schedule E to the bill, be struck out and the following substituted:

“Prior security agreement

“(2) For the purposes of this section, a security agreement entered into before the day subsection 3(2) of schedule E to the Ministry of Government Services Consumer Protection and Service Modernization Act, 2006 comes into force is a prior security agreement, subject to subsection (3).”

The Chair: Any debate? I’ll call the question. Those in favour? Opposed? It is carried.

Government motion number 27.

Mr. Dhillon: I move that subsection 7.3(3) of the Personal Property Security Act, as set out in section 6 of

schedule E to the bill, be struck out and the following substituted:

“Same

“(3) If a security agreement described in subsection (2) is amended, renewed or extended by agreement entered into on or after the day subsection 3 (2) of schedule E to the Ministry of Government Services Consumer Protection and Service Modernization Act, 2006 comes into force, the security agreement as amended, renewed or extended is a prior security agreement.”

The Chair: Any debate? I’ll call the question. Carried.

Government motion number 28.

Mr. Dhillon: I move that subsection 7.3(5) of the Personal Property Security Act, as set out in section 6 of schedule E to the bill, be struck out and the following substituted:

“Validity

“(5) For the purpose of determining the law governing the validity of a prior security interest, prior law continues to apply.”

The Chair: Call the question? Carried.

Government motion number 29.

Mr. Dhillon: I move that subsection 7.3(6) of the Personal Property Security Act, as set out in section 6 of schedule E to the bill, be struck out and the following substituted:

“Perfection

“(6) A prior security interest that was perfected by registration and that is a perfected security interest under prior law immediately before the day subsection 3(2) of schedule E to the Ministry of Government Services Consumer Protection and Service Modernization Act, 2006 comes into force continues perfected until the beginning of the earlier of the following days:

“1. The day perfection ceases under prior law.

“2. The fifth anniversary of the day subsection 3(2) of schedule E to the Ministry of Government Services Consumer Protection and Service Modernization Act, 2006, comes into force.”

The Chair: Call the question? Carried.

Government motion number 30.

Mr. Dhillon: I move that subsection 7.3(7) of the Personal Property Security Act, as set out in section 6 of schedule E to the bill, be struck out and the following substituted:

“Same

“(7) If a prior security interest referred to in subsection (6) is perfected in accordance with the applicable law as determined under this act, on or after the day subsection 3(2) of schedule E to the Ministry of Government Services Consumer Protection and Service Modernization Act, 2006 comes into force but before the earlier of the days referred to in paragraphs 1 and 2 of subsection (6), the security interest shall be deemed to be continuously perfected from the day of its perfection under prior law.”

The Chair: Call the question? Carried.

Shall schedule E, section 6, as amended, carry? Carried.

Shall schedule E, sections 7 to 17, carry? Carried.

We're now at schedule E, section 18: government motion number 31.

Mr. Dhillon: I move that section 18 of schedule E to the bill be struck out and the following substituted:

"18(1) Subsection 56(1) of the act is amended by striking out the portion after clause (b) and substituting 'any person having an interest in the collateral covered by the security agreement may deliver a written notice to the secured party demanding registration of a financing change statement referred to in section 55 or a certificate of discharge or partial discharge referred to in subsection 54(4), or both, and the secured party shall register the financing change statement or the certificate of discharge or partial discharge, or both, as the case may be.'

"(2) Subsection 56(2) of the act is amended by striking out 'demanding a financing change statement referred to in section 55 or a certificate of discharge referred to in subsection 54(4), or both, and the person named as the secured party shall sign and give to the person demanding it, at the place set out in the notice, the financing change statement or the certificate of discharge, or both, as the case may be' at the end and substituting 'demanding registration of a financing change statement referred to in section 55 or a certificate of discharge referred to in subsection 54(4), or both, and the person named as the secured party shall register the financing change statement or the certificate of discharge, or both, as the case may be.'

"(3) Subsections 56(2.1), (2.2), (2.3) and (2.4) of the act are repealed and the following substituted:

"Amendment

"(2.1) If a financing statement is registered under this act and the collateral description or collateral classification in the financing statement includes personal property that is not collateral under the security agreement, the person named in the financing statement as the debtor may deliver a written notice to the person named as the secured party demanding registration of a financing change statement referred to in section 49 to provide an accurate collateral description, and the person named as the secured party shall register the financing change statement.'

"(4) Subsection 56(4) of the act is repealed and the following substituted:

"Failure to deliver

"(4) Where the secured party, without reasonable excuse, fails to register the financing change statement, or certificate of discharge or partial discharge, or all of them, as the case may be, required under subsections (1), (2) or (2.1) within 10 days after receiving a demand for it, the secured party shall pay \$500 to the person making the demand and any damages resulting from the failure; the sum and damages are recoverable in any court of competent jurisdiction."

The Chair: Call the question, or debate? "Carried" is what I'm hearing. Carried.

Shall schedule E, section 18, as amended, carry? Carried.

Shall schedule E, sections 19 to 25, carry? Carried.

That moves us to government motion number 32.

Mr. Dhillon: I move that subsection 26(2) of schedule E to the bill be struck out and the following substituted:

"(2) Subsection 3(1) and section 4 come into force on the day section 126 of the Securities Transfer Act, 2006 comes into force."

The Chair: I will call the question. Carried.

Shall schedule E, section 26, as amended, carry? Carried.

Shall schedule E, as amended, carry? Carried.

Shall schedule F, sections 1 to 3, carry? Carried.

Shall schedule F carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 152, as amended, carry? Carried.

Shall I report the bill, as amended—

Mr. Kormos: One moment. Debate.

The Chair: On "Shall I report the bill to the House?" Okay. Shall I report the bill, as amended, to the House? Discussion, debate?

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Mr. Kormos: Thank you, Chair, very briefly. I appreciate that the Ontario Funeral Service Association was successful at getting the amendments that were approved by this committee put before this committee. I am disappointed that the portion of the bill addressing title fraud, the Land Titles Act and the security integrity of the land titles system, was not addressed in as thorough a manner as I think was necessary.

Mr. Tascona presented to the Legislature Bill 136, which I think is an important piece of legislation. It is my view that this committee missed an opportunity to talk in a meaningful way about restoring integrity to the land titles system by limiting itself to the proposals that were put before it at the end of the day which dealt with dealing with people after the fact, be it people who shouldn't have the authorization to submit documents to the land titles system or dealing with investigations and penalties for fraud. I remain of the strong view that the land titles system is going to have its integrity restored when we re-staff it, when we restore the regional offices and when documents that are submitted for registry undergo the scrutiny of staff in those land titles offices.

I think electronic registration is a big loophole, a big opportunity—the Achilles heel, if you will, of the system. It's unfortunate that the government didn't at least consider requiring that documents be scanned and submitted in a scanned form for inspection by land titles officials. That, to me, would be a far more effective way of at least having a first line of defence against obviously forged or otherwise improper documents. A missed opportunity: These things don't get addressed very often.

Unfortunately, as well—and I appreciate the comments of the minister, Mr. Gerry Phillips, in his letter. I do ask that the clerk accept the Phillips letter of December 5, 2006, that I referred to as an exhibit. I respect the fact that Mr. Phillips indicates that he would

like to see existing victims fast-tracked in terms of assurance. I regret that the legislation doesn't seem necessarily to allow that to happen, and it remains to be seen how that will happen.

I am grateful to Mr. Wood, legislative counsel, who assisted all of us. One of the problems with these committees done in short time frames is that it's not us who work particularly hard but the staff who do the stuff behind the scenes. Legislative research was helpful. Elliot Anderson in NDP research was of great assistance. I thank the staff, who were candid and open and frank in their responses to our sometimes painful queries. I appreciate that; I have for a couple of decades now and hope to be able to for some time yet.

There we are. I just wanted to make sure that some people who deserve some credit were given due credit. Thank you kindly, Chair.

The Chair: Thank you. Mr. Tascona.

Mr. Tascona: I just want to make a couple of comments. I'm disappointed, with respect to mortgage fraud, that not one amendment was voted for or accepted in any way by the government benches. In Bill 136, the measures that would have protected the system from identity fraud and allow victims such as Susan Lawrence and Elizabeth Shepherd to be protected—it's now in limbo and a big question mark as to whether that would actually occur. The measures put forth in the PC motions would have accomplished those things.

The other aspect I want to comment on is the personal liability insurance for bar owners. I do not understand why the government did not accept that amendment, especially with the forceful and very good presentations, apart from my arguments. The presentations made were, to me, just a no-brainer in terms of why you would need personal liability insurance for bar owners, considering

what has happened in the law with respect to host liability and trying to deter drinking and driving, as a policy of this government. To vote down personal liability insurance for bar owners just speaks volumes in terms of what the government thinks about drinking and driving.

I want to say that I appreciate the work by Michael Wood. Our staff in the PCRS did some great work. And Trevor Day was always available—a little late on the food tonight, but that's okay; I'm satisfied now.

I think the bill was an opportunity, and I'm very disappointed that the mortgage fraud and the personal liability for bar owners was not put into the bill. So I can't support the bill.

Mr. Leal: I'll be quick. I want to thank Minister Phillips and his staff for picking up the essential thrust of my private member's bill, Bill 60, which I introduced last spring, dealing with Internet gaming in Ontario. I had ongoing discussions with Minister Phillips. It's something that's topical and getting a lot of discussion. Internet gaming is illegal under the federal Criminal Code, and unfortunately the federal government has shown a great deal of ambivalence in enforcing their own Criminal Code. I was contacted by states in the United States, American Congressmen and people from Great Britain who are certainly saluting us that Ontario again is showing leadership in this area.

Mr. Chairman, I want to thank you for that opportunity to get this on the record.

The Chair: We have a question that I am going to call. Shall I report the bill, as amended, to the House? Those in favour? Those opposed? Carried.

As it is now exactly 6 o'clock, this committee stands adjourned.

The committee adjourned at 2027.

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